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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

NO. 683, Misc.

WILLIAM B. HARTSFIELD, *Petitioner*

v.

HONORABLE BOYD SLOAN,
United States District Judge for the
Northern District of Georgia, *Respondent*

MOTION FOR LEAVE TO FILE PETITION FOR A WRIT OF MANDAMUS, AND PETITION FOR A WRIT OF MANDAMUS

MORRIS B. ABRAM
1504 Healey Building
Atlanta 3, Georgia

CHARLES L. WELTNER
1405 Fulton National Bank Building
Atlanta 3, Georgia

OSGOOD O. WILLIAMS
1018 Healey Building
Atlanta 3, Georgia

MAURICE N. MALOOF
1504 Healey Building
Atlanta 3, Georgia

Counsel for Petitioner

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MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS

Petitioner moves the Court for leave to file the petition for a Writ of Mandamus hereto annexed; and further moves that an order and rule be entered and issued directing the Honorable Boyd Sloan, Judge of the United States District Court for the Northern District of Georgia, Atlanta Division, to show cause why a Writ of Mandamus should not be issued against them in accordance with a prayer of said petition and why your petitioner should not have such other and further relief in the premises as may be just and meet.

MORRIS B. ABRAM
CHARLES L. WELTNER
OSGOOD O. WILLIAMS
MAURICE N. MALOOF

Counsel for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

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WILLIAM B. HARTSFIELD, *Petitioner*

v.

HONORABLE BOYD SLOAN,
United States District Judge for the
Northern District of Georgia, *Respondent*

PETITION FOR A WRIT OF MANDAMUS TO THE HONORABLE BOYD SLOAN, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

To the Honorable Earl Warren, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petition respectfully shows the following:

This petition seeks the issuance of a writ of mandamus to require the Honorable Boyd Sloan, Judge of said Court, to convene a court composed of three judges to hear and determine the application for injunction prayed for therein by petitioner.

OPINION BELOW

The opinion of the court below is unreported, and is attached as Appendix A.

STATEMENT OF JURISDICTION

The opinion of the court below dated and entered April 1, 1957 denied the application of petitioner for a District Court composed of three judges. There is no motion for rehearing. The jurisdiction of this Court is invoked under Title 28 USC, Section 1651 (a).

The following decisions sustain the power and jurisdiction of this Court to issue the writ of mandamus which is herein sought:

Ex Parte Braunford 310 US 354 (1940)

Ex Parte Poresky 290 US 30 (1933)

Ex Parte Metropolitan Water Co. 220 US 539 (1911)

QUESTIONS PRESENTED

The petitioner on March 15, 1958 filed a complaint in the United States District Court for the Northern District of Georgia seeking an interlocutory and permanent injunction restraining the enforcement, operation and execution of a Georgia Statute on the grounds of the Statute's unconstitutionality. The relief prayed for can only be granted by a panel court (Title 28 USC, Section 2281). The District Judge refused to convene said court as required by Title 28 USC, Section 2284.

The general issues presented can be summarized as follows:

The case below is one attacking the constitutionality of the so-called "county unit" method of tabulating votes in

the Georgia Democratic Primary to be held prior to the November general election in 1958.

It is not a case involving any district apportionment nor the selection of representatives by geographical subdivisions. Nor is it a case involving nomination or election by delegates on a territorial basis. It is not a suit seeking to prevent the holding of an election, nor to seek the doing of any additional act not now required by state law.

The petition does attack the constitutionality of a state statute which requires that after the popular vote has been counted it be tabulated and consolidated in a manner that discriminates against certain groups of voters by reducing the value of each of their votes.

Qualifications are uniform for all voters entitled to cast a ballot in the coming state-wide Democratic Primary, which is tantamount to election. Petitioner will vote in the coming Primary. When his vote is tabulated, application of the county unit system will drastically devalue his vote in comparison with the votes cast in the same election by every other voter in the state residing outside of his county.

Petitioner contended in his complaint that the devaluation of his ballot solely on the basis of his domicile is unconstitutional.

The order refusing the convening of the panel court was based on the court's determination that "previous decisions of the Supreme Court of the United States foreclose the subject and leave no room for inference that the question sought to be raised can be the subject of controversy."

The specific questions raised by the order are as follows:

I. Whether previous decisions of this Court "leave no room for inference" but that the county unit system of tabulating votes is clearly constitutional?

II. Whether previous decisions of this Court "leave no room for inference" but that the judiciary is con-

stitutionally barred from consideration of cases involving the right to vote.

III. Whether previous decisions of this Court declining to disturb the refusal of lower courts to exercise their equitable powers in cases involving the right to vote foreclose a panel court from entertaining a petition for equitable relief—notwithstanding Part III, Civil Rights Act of 1957 (62 Stat. 932, Title 28 USC, Section 1343 (4)).

IV. Whether the previous decisions of this Court "leave no room for inference" but that a voter in the Georgia Democratic Primary is without constitutional protection?

STATUTES INVOLVED

The following constitutional provisions and statutes are involved:

Title 28 USC, Section 1343, as amended by section 121 of the Civil Rights Act of 1957 as follows:

"Part III—To Strengthen the Civil Rights Statutes, and for Other Purposes.

Sec. 121. Section 1343 of title 28, United States Code, is amended as follows:

(a) Amend the catch line of said section to read, '§ 1343. Civil rights and elective franchise'

(b) Delete the period at the end of paragraph (3) and insert in lieu thereof a semicolon.

(c) Add a paragraph as follows:

'(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.'

The entire Section 1343 as amended is set forth in Appendix B.

Section I of Amendment XIV of the Constitution of the United States, as Appendix C.

Title 42 USC Section 1983, as Appendix D.

Title 28 USC, Sections 2281, 2284 (1), as Appendix E.

Section 34-3212 through Section 34-3218, as Exhibit B to Appendix G which is the petition below.

STATEMENT OF THE CASE

On March 15, 1958, petitioner filed a complaint in the United States District Court for the Northern District of Georgia, Atlanta Division, styled William B. Hartsfield, v. John Sammons Bell, et al, Civil Action 6385. A copy of the complaint and the exhibits thereto are set out as Appendix G.

The complaint alleges that petitioner is a citizen of the United States and of the State of Georgia, a resident of Fulton County, Georgia, and is qualified to vote in the Democratic primary election for statewide officers to be held in 1958; that the Democratic primary is governed by statutes of Georgia, and nomination therein is tantamount to election; that the votes to be cast in the primary election will be tabulated in accordance with the provisions of Sections 34-3212 through 34-3218, Georgia Code Annotated, commonly referred to as the "county unit system."

Under the county unit system nomination does not go to the candidate who receives the majority or plurality of the statewide vote; but rather the popular vote is counted and then consolidated by counties, the candidate receiving the greatest number of votes within any county being entitled to the total "unit vote" of such county and the candidate receiving the greatest number of "unit votes" winning the nomination; that the eight largest counties are entitled to six unit votes each, the thirty next-largest counties are entitled to four unit votes each, and the remaining one

hundred twenty-one counties are entitled to two unit votes each.

Petitioner alleged in his complaint that the county wherein he resides and is entitled to vote is the most populous county in the state, with a population of 561,000, or 14.6% of the population of Georgia, having but 6 unit votes, or 1.45% of the total unit vote of the several counties of the state; that Echols County is the smallest county in population in Georgia, with a population of 2200, or .05% of the population of the State, and has 2 unit votes, or 48% of the total unit vote; that by reason of the difference in population of Fulton County and the smallest county, one vote cast in Echols County has 85 times the weight and influence of his vote in the Georgia Democratic primary. Petitioner further alleged that on the basis of the number of votes cast in the several counties in the most recent gubernatorial nomination in 1954, one vote cast in Chattahoochee County had one hundred and fifty-five times the weight of his vote. The complaint showed that the discrimination against voters of Fulton County and other larger counties of Georgia had increased steadily since the enactment into law of the county unit system in 1917.

Notwithstanding how populous Fulton County becomes, though it should contain ten million inhabitants comprising 90 per cent of Georgia's population, the county unit system prevents its residents from having more than a 1.45 per cent voice in the selection of state and congressional officers.

The Court may take judicial notice that in 1950 and 1952 the voters of the State of Georgia, by overwhelming popular majorities, repudiated resolutions passed by two-thirds majorities of the State House of Representatives and State Senate proposing to incorporate elements of the county unit system in the State Constitution. Nevertheless, as petitioner alleged in his complaint, there is no hope of relief by state legislation inasmuch as the most numerous house of the legislature is constituted on the same basis as

the county unit system. Proposed remedial legislation introduced at the 1958 session of the General Assembly was tabled.

The statutes of Georgia requiring consolidation of votes were alleged by petitioner to be unconstitutional on the ground that they were arbitrary and discriminatory, deprived him of liberty and property without due process of law, and denied him the equal protection of the laws and that, as such, were unlawful as the abridgement and deprivation of his right to vote in violation of Title 42 USC, Section 1983. The plaintiff named as defendants the Georgia Democratic Party, State Democratic Executive Committee, and its chairman and secretary, whom the offending statute requires to apply the county unit formula in vote consolidation and to certify nominees on the basis thereof.

The plaintiff also named as a defendant the Secretary of the State of Georgia, who is required by statute to place on the general election ballot the names of the candidates certified by this tabulation procedure.

The complaint sought interlocutory and permanent injunction to restrain the action of defendants in compliance with the county unit system, and declaratory judgment holding the statutes void as unconstitutional. Inasmuch as the complaint sought interlocutory injunction against an officer of a state to restrain him from action in compliance with a state statute alleged to be unconstitutional, petitioner sought the empaneling of a District Court composed of three judges as provided in Title 28, USC 2281. The basis for federal jurisdiction in the court of first instance rests upon Title 28 USC, Section 1343, as amended.

Upon motion of defendants, which is attached as Appendix F, the District Court Judge to whom the application was presented entered order on April 1, 1958 denying the request for a three judge court on the ground that the complaint presented no substantial federal question in view of previous decisions of this Court.

REASONS FOR GRANTING THE WRIT

Mandamus is the appropriate remedy

When a single judge improperly refuses to convene a three-judge court, mandamus pursuant to Title 28 USC, Section 1651 is the appropriate remedy. As the writ sought is in aid of the jurisdiction of this Court, relief by mandamus is not available in any other court.

Ex Parte Bransford, 310 US 354 (1940);

Ex Parte Metropolitan Water Co., 220 US 539 (1911);

Ex Parte Northern Pacific Railway Co., 280 US 142 (1929);

Ex Parte Hobbs, 280 US 168 (1929);

Stratton v. *St. Louis Southwestern R. Co.*, 282 US 10 (1930);

Ex Parte Poresky, 290 US 30 (1933).

The Judge Below was Required to Convene a Three Judge Court

The judge below refused to convene a three judge court, holding under the rule of *Ex Parte Poresky* 290 U.S. 30 that the federal question sought to be raised in the petition was "unsubstantial for the reason that the previous decisions of the Supreme Court of the United States foreclose the subject and leave no room for inference that the question sought to be raised can be the subject of controversy."

I. THE PREVIOUS DECISIONS OF THIS COURT HAVE NOT UPHELD THE CONSTITUTIONALITY OF THE COUNTY UNIT SYSTEM OF TABULATING VOTES.

This Court has not upheld the constitutionality of the

county unit system in any case arising under the statute attacked, or in any other decision.

Four cases involving the Georgia county unit system have been docketed in this Court. In none of them was the statute declared to be constitutional nor was this question passed upon by the Court:

In *Turman v. Duckworth* and *Cook v. Fortson*, 329 U.S. 675 the appeal was dismissed as the issues raised therein were then moot—the primary election attacked having been held and the nominees thereof certified.

In *South v. Peters*, 339 U.S. 276 this Court refused to disturb the lower court's decision not to exercise equitable jurisdiction. In *Cox v. Peters*, 342 U.S. 936 this Court dismissed an appeal from a decision of the Supreme Court of Georgia (208 Georgia Reports 498) which had held that the Georgia Democratic Primary was not constitutionally protected.

The only expression of opinion by members of this Court on the constitutionality of the county unit statute is that of Mr. Justice Douglas, concurred in by Mr. Justice Black, in the *South* case:

> "I can see no way to save (the county unit system) . . . under the Equal Protection Clause. The creation by law of favored groups of citizens and the grant to them of preferred political rights is the worst of all discrimination under a democratic system of government."

The constitutionality of the statute attacked has never been upheld inferentially in any analogous case in this Court. Certainly the case of *MacDougall v. Green*, 335 U.S. 281, does not support the decision below. The *MacDougall* case did not deal with the individual right to vote and to have the vote counted, but with a state's power to "assure a proper diffusion of political initiative . . ." Further this Court did not consider the diffusion of the power to be dis-

proportionate, as the plaintiff in that case, together with other persons in his class, comprised but 52% of the state population, but were allowed under the statute attacked 61% of the political initiative.

The case of *Colegrove v. Green*, 328 U.S. 549, stands for the principle of equitable discretion, discussed under the third question presented. Mr. Justice Frankfurter's opinion also deals with the issue discussed under the second question presented. That case is not a holding on the issue under the first question presented here under discussion. However, it may be noted that in the *Colegrove* case the complaint was inequality of representation in Congress, not dilution or dimunition of the plaintiff's vote. In the case at Bar the complaint is that petitioner's vote is discounted in its tabulation with the votes of others within the same class, namely, qualified electors for the offices voted upon. In the *Colegrove* case plaintiffs enjoyed the same voting power as others in their class, namely, the electors of the same Congressional District.

Wood v. Broom 287 U.S. 1 was similar to the *Colegrove* case arising from a congressional redistricting statute. This Court held only that the Mississippi statute did not violate the Federal Congressional Reapportionment Act of 1929.

Moreover, that this Court has never by previous decision so clearly upheld the constitutionality of the county unit system as to foreclose the subject is demonstrated beyond doubt by statements to the exact contrary appearing in two of the cases cited by the court below:

In the *Cook* case, supra, Mr. Justice Rutledge observed (at page 678) ". . . the issues, whether of jurisdiction or discretion in exercising it, *or of substantive right* . . . have *not* been conclusively adjudicated by prior decisions of this court." (Emphasis supplied.) In the *South* case, supra, Mr. Justice Douglas stated, "I can see no way to save (the

county unit system) . . . under the Equal Protection Clause."

II. THE PREVIOUS DECISIONS OF THIS COURT HAVE NOT RULED THAT THE JUDICIARY IS CONSTITUTIONALLY BARRED FROM CONSIDERATION OF CASES INVOLVING THE RIGHT TO VOTE.

A clear line of demarcation should be drawn between two oft-confused concepts of judicial limitation. The first, constitutional, is the theory of political *question* based on the separation-of-powers doctrine; the other, self-imposed, is the discretionary denial of equitable relief in political *rights* cases. In the former the court *lacks* jurisdiction; in the latter, having jurisdiction, it merely refuses its exercise. It is also important to note the distinction between a political QUESTION and a political RIGHT. A political *question* is a question whose determination lies within the prerogative of another branch of government, and hence is outside the jurisdiction of the court. A political *right* on the other hand is a personal and private right, such as the right to vote. The presence of an issue of political rights will not render a case non-justiciable, but may cause a court to refuse to exercise its equitable jurisdiction, as was done in *South v. Peters*, Supra.

When the Court is dealing with unequal legislative representation resulting from disproportionate legislative districts, the case may involve both concepts. The *Colegrove* case involved the constitutionality of a Congressional Apportionment Statute of the State of Illinois. Denial of relief possibly could have been based on either theory. Invalidation of the statute and the grant of the injunction prayed for in that case would have left Illinois without existing Congressional Districts, contrary to clear Congressional mandate that representatives be elected from geographical districts defined by the several states. The Court was thus presented with a problem lying clearly within the competence of the Congress under Article I, Section 4 of the

United States Constitution, and Congress, in the applicable Reapportionment Act of 1929 (46 Stat. 21, 28), had clearly omitted the former requirement as to the compactness, contiguity and equality in population of Congressional Districts. Mr. Justice Frankfurter's opinion, in which he was joined by two justices, differentiates between the action before the Court in that case and one that might arise out "of the discriminatory exclusion of a plaintiff from rights enjoyed by other citizens."

Nevertheless the *Colegrove* case cannot be taken as holding that the question presented was non-justiciable inasmuch as a majority of the members thought that *Smiley v. Holm*, 285 U. S. 355, had determined that such issues were justiciable. Mr. Justice Rutledge agreed with the dissent that the Court had jurisdiction but thought that the injunction was rightly denied as a matter of equitable discretion.

The majority holding of this case was summarized by Mr. Justice Rutledge in *Turman v. Duckworth*, supra, at page 678, as follows:

"A majority of the Justices participating refused to find there was a want of jurisdiction, but at the same time a majority, differently composed, concluded that the relief sought should be denied."

That the Court did not accept the doctrine of non-justiciability seemingly expressed by Mr. Justice Frankfurter in the *Colegrove* case seems to be borne out by the later case of *MacDougall v. Green*, supra. The unanimous assumption of jurisdiction by an otherwise divided court in that case (and this without discussion) can be taken as a holding that political rights cases, as distinguished from political questions, are clearly justiciable. In view of the line of authority from *Nixon v. Herndon*, 273 U.S. 536, through *Terry v. Adams*, 345 U.S. 461, it cannot be seriously contended that

the issue of the right to vote poses a political question outside judicial province.

III. PREVIOUS DECISIONS OF THIS COURT DECLINING TO DISTURB THE REFUSAL OF LOWER COURTS TO EXERCISE THEIR EQUITABLE POWERS IN CASES INVOLVING THE RIGHT TO VOTE DO NOT FORECLOSE A PANEL COURT FROM ENTERTAINING A PETITION FOR EQUITABLE RELIEF, PARTICULARLY IN VIEW OF THE NEWLY ENACTED PART III, CIVIL RIGHTS ACT OF 1957 28 USC SECTION 1343 (4).

Suits at law for damages arising out of the Federally protected right of suffrage have been entertained consistently in the Federal Courts. *Wiley v. Sinkler*, 179 U.S. 58; *Nixon v. Herndon*, supra; *Nixon v. Condon*, 286 U.S. 73. But injunctive relief, which by flexible decrees assures the parties of the greatest approximation of their normal rights, has been hedged about by a traditional reluctance to grant equitable relief in cases involving political rights, such as the right to vote. This is a species of judicial self-limitation, neither constitutional in origin nor based upon a lack of jurisdiction over the subject matter. This is the doctrine asserted by this Court in *South v. Peters*, supra, in the majority opinion consisting of but one determinative sentence: "Federal courts consistently refuse to *exercise* their equity *powers* in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." (emphasis supplied) This holding can mean no more than the affirmance by this Court of the refusal of the lower court (*South v. Peters*, 89 F. Supp. 672) to exercise its equitable jurisdiction in enjoining the operation of the county unit system under the facts of that case.

A host of practical considerations has entered into decisions of Federal Courts not to grant equitable relief in cases involving political rights. None of these are present in the case at Bar. The instant case is not an apportionment case, as were the *Wood* and *Colegrove* cases; it seeks no

action by the federal judiciary in an area in which Congress has legislated under Article I, Section IV of the United States Constitution. This action does not seek to bar any candidate from office (*Johnson v. Stephenson* 170 F2d 108) nor to reverse the result of any election, as would have been the case in *Turman v. Duckworth*, supra, nor would it invalidate ballots already prepared, including absentee ballots, as in *MacDougall v. Green*, supra. It does not seek to require indirectly by injunction the passage of an act, which courts are powerless to order, as in *Colegrove v. Green*, supra; it does not require the Court to supervise the mechanics for the registration of thousands of voters, as in *Giles v. Harris* 189 U.S. 475. This action merely seeks to require the defendants to accord full and equal weight to plaintiff's vote without dimunition or dilution. As stated in the minority opinion in *South v. Peters*, supra:

> "The rights they seek to enforce are personal and individual. Moreover, no decree which we need enter would collide either with Congress or with the election. Georgia need not be remapped politically. The Georgia legislature need not take new action after our decree. There is no necessity that we supervise an election. There need be no change or alteration in the place of the election, its time, the ballots that are used, or the regulations that govern its conduct. The wrong done by the County Unit System takes place not only after the ballots are in the box but also after they have been counted. The impact of the decree would be on the tallying of votes and the determination of what names go on the general election ballot. The interference with the political processes of the state is no greater here than it is when ballot boxes are stuffed or other tampering with the votes occurs and we take action to correct the practice."

The traditional reluctance of the federal courts to exercise their equitable powers in voting cases seems to stem from the case of *Giles v. Harris*, supra. In the Giles case, Mr. Justice Holmes found many practical obstacles to the

use of equitable judicial power, none of which are present in the case at Bar. Nevertheless, the opinion stated:

> "We are not prepared to say that the decree should be affirmed on the ground that the subject matter is wholly beyond the jurisdiction of the Circuit Court."
> . . . .
>
> "It will be observed, in the first place, that the language of (Title 42 USC 1983) does not extend the sphere of equitable jurisdiction in respect of what shall be held an appropriate subject-matter for that kind of relief. The words are, 'shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.' They allow a suit in equity only when that is the proper proceeding for redress, and they refer to existing standards to determine what is a proper proceeding. The traditional limits of proceedings in equity have not embraced a remedy for political wrongs."

The means of enforcing the substantive rights granted by Title 42 USC, Section 1983 is provided in Title 28 USC, Section 1343 (*Glicker v. Michigan*, 160 Fed. 2d 96).

The deficiency pointed out by Mr. Justice Holmes is now remedied in language specifically relating equity jurisdiction to voting rights. (Part III, Civil Rights Act of 1957, Title 28 USC, Section 1343 (4).) The *Giles* case has cast a blight upon the use of equity in voting cases. This decision does not stem from constitutional want of jurisdiction, as Mr. Justice Holmes himself demonstrated in *Nixon v. Herndon*, supra. Even so, traditional reluctance to employ equity as evidenced by *South v. Peters*, supra, has been by no means an absolute rule. Long before the amendment to the Civil Rights Act (Title 28 USC, Section 1343 (4)) federal equity jurisdiction based upon implied power has been exercised from time to time (*Smiley v. Holm*, 285 U.S. 355; *Rice v. Elmore*, 165 F. 2d, 387; and *Terry v. Adams*, supra.) In Section 121 of the Civil Rights Act of 1957, Title 28 USC, 1343 (4) Congress has un-

equivocably provided for equitable jurisdiction in cases involving the right to vote. It is significant that Part III of the Act is entitled "TO STRENGTHEN THE CIVIL RIGHTS ACT, . . ." and that the amendment supplements pre-existing procedural legislation by adding, "To recover damages *or to secure equitable or other relief* under any Act of Congress providing for the protection of civil rights, *including the right to vote*" (emphasis added) Obviously Congress intended by the addition of this subparagraph that courts *should* exercise equitable jurisdiction in cases, such as this, involving the right to vote. If the phrase, "including the right to vote," have any meaning it must be that the traditional hesitance of the judiciary to grant equity in political rights cases must yield to the will of Congress, and that the right to vote be enforceable by the full powers of the judiciary. No decision has been found that cites this amendment, and so far as is apparent this is a case of first instance. The Civil Rights Act of 1957, as major legislation of the Eighty-Fifth Congress, is of national importance. Although expressly relied upon by petitioner, no mention thereof is made in the order and ruling of the court below. To hold that this complaint presents no substantial federal question notwithstanding this expression of Congressional intent—as yet unweighed by any court—and to refuse to convene the enlarged court in response to petitioner's invocation of this legislation, is a denial of right remediable only by a writ of mandamus issuing of this Court.

Moreover, the fact that this Court may uphold a lower court's discretionary refusal to lend the aid of equity to protect the right to vote cannot justify the refusal of the Court below to convene a three-judge court. The three-judge court itself must decide whether or not *in its discretion* it will refuse to exercise its equity powers in this case. The single judge cannot make that determination.

IV. UNDER PREVIOUS DECISIONS OF THIS COURT IT IS

CLEAR THAT A VOTER IN THE GEORGIA DEMOCRATIC PRIMARY ENJOYS CONSTITUTIONAL PROTECTION.

In *Chapman v. King*, 154 Fed. 2d 460 it was held that the Georgia Democratic Primary involved in that case was constitutionally protected. Subsequent to *Chapman v. King*, supra, the Supreme Court of Georgia decided the case of *Cox v. Peters* (208 Ga. 498, 67 SE 2nd 579). This was a suit at law for damages by a voter who alleged that defendants in that case, acting in compliance with the county unit system, had abridged his right of franchise. The Georgia court did not consider whether the discrimination inherent in the county unit system was constitutional but held that the Georgia Democratic Primary was not an "election" within the meaning of the constitutional provisions of Georgia conferring upon citizens the right to vote and hence was not constitutionally protected. This Court, in a *per curiam* decision, dismissed "for the want of a substantial federal question." The ruling of the Georgia Supreme Court is in diametic opposition to the holding in *Chapman v. King*, supra, to the effect that the Georgia Democratic Primary is constitutionally protected. Any doubt concerning the status of primary elections in voting cases has been conclusively resolved by the recent holding of this Court in *Terry v. Adams*, supra, involving a primary held prior to the regular primary for county and precinct offices. The theory of the Georgia court in the *Cox* case is so utterly foreign to the past and recent expressions of this Court as to obviate serious consideration.

CONCLUSION

Under the allegations and prayers of the complaint, Title 28 USC, Section 2281, and Title 28 USC, Section 2284, the judge below was required to convene a three-judge court. The court's unjustified refusal to convene the panel court can only be rectified by mandamus.

The court's conclusion of law that previous decisions of this Court have foreclosed the subject and leave no room for inference that the question sought to be raised can be the subject of controversy is erroneous, and does not justify its refusal to convene the panel court. Said conclusion of law is erroneous for the reason that previous decisions of this Court have not upheld the constitutionality of the county unit system of tabulating votes either in prior county unit cases or any other case. The only members of this Court who have expressed opinions indicated that the system is unconstitutional. Previous decisions of this Court have not held that the judiciary lacks jurisdiction in cases involving the right to vote. Rather, this Court has consistently determined voting cases on their merits in both damage suits and equity cases. That this Court has in *some* cases refused to exercise its equity jurisdiction to protect voting rights cannot justify refusal to convene a panel court, as this discretionary determination must be left to the panel court. Such precedents notwithstanding, the traditional judicial reluctance to invoke equity in voting cases must yield to the will of Congress as expressed in Title 28 USC, Section 1343 (4), expressly conferring jurisdiction.

Previous decisions of this Court do not indicate that a voter in the Georgia Democratic primary enjoys no constitutional protection, but conclusively to the contrary.

The complaint seeks relief before the primary nominees are certified for the November General Election ballot. The complaint is timely, and the petitioner is in urgent need of speedy relief as herein prayed. By the time this Court reconvenes in October, the defendant party officials, if unrestrained, doubtless will have certified the nominees. The mootness problem in *Turman v. Duckworth*, supra, will then be in the case. The defendants may then complain of mootness as they now do of prematurity. Because of the normal term of this Court the petitioner can scarcely hope to ob-

tain relief unless the questions presented in this petition are resolved before the coming summer recess of this Court.

The holding of the District Court that the question sought to be raised is unsubstantial and the refusal to convene the panel court constitutes error, which should be remedied by writ of this Court.

WHEREFORE, petitioner prays:

That a writ of mandamus issue from this Court directed to the Honorable United States District Court for the Northern District of Georgia, Atlanta Division, and to the Honorable Boyd Sloan, Judge of said Court, requiring said Honorable Boyd Sloan to show cause on a day to be fixed by this Court why mandamus should not issue from this Court directing said Honorable Boyd Sloan to vacate and set aside said ruling and order of April 1, 1958, sustaining the motion of defendants in refusing to convene a three judge court and to convene without delay the three judge court in the case of Hartsfield v. Bell, Chairman, etc., et al, Civil Action 6385, pending in the Northern District of Georgia, Atlanta Division.

Morris B. Abram

Charles L. Weltner

Osgood G. Williams

Maurice N. Maloof

Counsel for Petitioner

APPENDIX A

IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

WILLIAM B. HARTSFIELD v. JOHN SAMMONS BELL, as Chairman of the Georgia State Democratic Executive Committee, et al	NO. 6385 CIVIL ACTION

The complaint here seeks interlocutory and permanent injunction and declaratory judgment to restrain adherence to the County Unit System prescribed by Georgia Annotated Code, § 34-3312 et. seq. in the Democratic Primary which it is alleged will be held for the nomination of state officers, it being alleged that said statutes are unconstitutional in that they contravene the equal protection and due process clause of the Fourteenth Amendment to the Constitution of the United States.

The complaint prays for the convening of a three-judge court pursuant to the provisions of Title 28 U. S. C., § 2281 et seq.

The defendants have filed motions praying that the court declare that the action is not one for a three-judge court.

In said motions, the defendants contend that the allegations of the complaint fail to set up a substantial federal question and that a three-judge court should not be convened.

Said motions came on for hearing under proper orders of this Court. Briefs and written arguments were filed in support of and in opposition to the defendants' motions and lengthy oral arguments for and against said motions

were heard by the Court and said motions are now before the Court for determination.

In Ex Parte Poresky, 290 U. S. 30, 32, it is held:

That a substantial claim of unconstitutionality is necessary before this court would be authorized to convene a three-judge court and that the law does not require three judges to pass upon this initial question. That the existence of a substantial question of constitutionality must be determined by the allegations of the bill of complaint. That the question may be plainly unsubstantial either because it is obviously without merit or because its unsoundness so clearly results from the previous decisions of the Supreme Court of the United States as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.

In South v. Peters, 89 F. Supp. 672, affirmed 339 U. S. 276, the case was in all essentials the same as the case here presented.

The plaintiffs there, South and Fleming, brought suit against the then officers of the Georgia State Democratic Party and others to restrain the operation of the Neill Primary Election Laws, providing for a rule of consolidation by "County Units" instead of by majority or plurality of the entire votes cast in the primary on the ground that under such rule the plaintiffs and their fellow voters in Fulton County, Georgia would be denied equal protection of the laws as against voters in the less populous counties in violation of the Fourteenth Amendment.

The district court, Honorable Samuel H. Sibley, Circuit Judge and Honorable Hoyt Davis, District Judge, held that the statutes did not violate the equal protection clause of the Fourteenth Amendment. Honorable Neil Andrews, District Judge, dissented.

In the opinion Judge Sibley, speaking for the Court, re-

viewed the history of the County Unit System in Georgia, showing that it was put into effect under the first State Constitution of Georgia in 1777.

In discussing the case then before the court, Judge Sibley said:

> "Here each qualified person is to be permitted to vote and his vote is to be truly counted; and the whole trouble is that by subdividing the territory into voting units of unequal population, and presumably of unequal voting strength, one unit has an advantage over another unit in political effect. The petitioners complain of no wrong personal to themselves and not common to all the voters in their unit. The wrong, if any, is to their unit."

Further discussing the Neill Primary Act, Judge Sibley states:

> "The Neill Act does not command primaries nor abolish conventions, but tells a party that if it chooses to have a primary it must ascertain its result by the old convention standard, and abide by it, the convention no longer having the final choice of nominees."

In discussing Fulton County's unique position, Judge Sibley further states:

> "This has been accepted as reasonable until Fulton County by its own growth and absorption of other counties has become unique and wishes unique treatment. We are of the opinion as already stated that the judgment and conscience of the Legislature must afford it."

After giving full consideration to the cases on the subdivision of the election territory or nominating territory—Wood v. Broom, 287 U. S. 1; Colegrove v. Green, 328 U. S. 549; Turman v. Duckworth, 68 F. Supp. 744, disposed of in Supreme Court, 329 U. S. 675, and referred to in a per curiam in Colegrove v. Barrett, 330 U. S. 804 and Mac Dougall v. Green, 335 U. S. 28—Judge Sibley, speaking for the Court, concluded:

> "The federal Constitution does not take from the States their right to set up their own internal organization and prescribe the manner of State elections. We do not think the Fourteenth Amendment condemns the Neill Primary Act as to them. If there is political wrong, the remedy is in the State Legislature which can so amend the Act as to deal with Fulton County specially. Certainly this court of equity should not adjudge the matter."

In Colgrove v. Green, 328 U. S. 549, 556, Mr. Justice Frankfurter observed:

> "Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State Legislatures that will apportion properly, or to invoke the ample powers of Congress."

In Mac Dougall v. Green, 335 U. S. 281, the Court said:

> "It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the States."

In Cox v. Peters, 208 Ga. 498, it was held:

> "A party primary held under the provisions of Code § 34-3212 merely chooses candidates or nominees of a political party to be submitted to the entire electorate in the general election, and is not an *election* within the meaning of that term as used in the statutory and constitutional provisions of Georgia conferring upon its citizens the right to vote in an election; and the right to participate in such a primary does not come within the protection of the Fourteenth and Fifteenth Amendments to the Federal Constitution."

On the appeal from the Supreme Court of Georgia to the

Supreme Court of the United States a motion to dismiss was filed in that court and the Supreme Court in Cox v. Peters, et al, 342 U. S. 936, said:

> "The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question."

Upon a careful review of the authorities dealing with the question of the subdivision of an election territory, the Court is of the opinion that the federal question sought to be raised here is unsubstantial for the reason that the previous decisions of the Supreme Court of the United States foreclose the subject and leave no room for inference that the question sought to be raised can be the subject of controversy.

On the basis of the above ruling, this Court refuses to convene a three-judge court as prayed in the complaint.

This the 1st day of April, 1958.

BOYD SLOAN

United States District Judge

APPENDIX B

Title 28 USC, 1343:

"Civil rights and elective franchise.—The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

APPENDIX C

Section I of Amendment XIV of the Constitution of the United States:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX D

Title 42 USC, Section 1983:

"Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

APPENDIX E

Title 28 USC, Section 2281:

"Injunction against enforcement of State statute—An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

Title 28 USC, Section 2284 (1):

"In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall

be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding."

APPENDIX F

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

WILLIAM B. HARTSFIELD, Plaintiff v. JOHN SAMMONS BELL, as Chairman of the Georgia State Democratic Executive Committee, et al.	CIVIL ACTION No. 6385

MOTION OF THE DEFENDANTS, JOHN SAMMONS BELL, AS CHAIRMAN OF THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; GEORGE D. STEWART, AS SECRETARY THEREOF, ET AL.

Comes now John Sammons Bell, as Chairman of the Democratic Executive Committee of the State of Georgia, George D. Stewart, as Secretary of the Georgia State Democratic Executive Committee, The Georgia State Democratic Executive Committee, and show to the Court:

1.

The complaint in the case stated with summons attached was served upon movant by a Deputy United States Marshal on March 18, 1958.

2.

Prayers (a), (b) and (c) thereof are:

(a) That this, his bill in equity for interlocutory and

permanent injunction and petition for declaratory judgment, be sanctioned and ordered filed;

(b) That defendants be required to show cause on a stated date why the relief herein prayed for should not be granted;

(c) That a Court consisting of three judges be convened at the earliest possible date to hear and determine the matters herein.

3.

The copy of the complaint and summons served upon movant does not contain any sanction or order of the United States Judge to whom it was presented ordering it filed.

4.

The copy of the complaint and summons served upon movant does not contain any order or rule nisi requiring the defendants to show cause on any stated date why the relief prayed for therein should not be granted.

5.

The court consisting of three judges prayed for by complainant has not been convened, and should not be convened for the reasons hereinafter stated.

6.

The allegations of the complaint reveal that there does not exist a substantial question as to the constitutionality of the statutes of the State of Georgia sought to be attacked in the complaint.

7.

The question is plainly unsubstantial because:

(a) It is obviously without merit.

(b) Its unsoundness so clearly results from the previous

decisions of the Supreme Court of the United States as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy;

(c) It is apparent that complainant seeks relief to which he is not entitled;

(d) The petition seeking to convene a three-judge court does not present sufficient facts showing that there is real substance to the claim.

8.

Movants deny that plaintiff has any cause or right of action against them. If any he has by reason of the subject matter of the complaint, the complaint shows on its face that it is prematurely brought.

9.

The United States District Judge to whom the complaint was presented, the Honorable William Boyd Sloan, has authority to dismiss it for want of jurisdiction when the question involved in the complaint lacks the necessary substance.

WHEREFORE, the movants named move the Court to declare that the action is not one for consideration by a three-judge court or to dismiss the action.

CHARLES J. BLOCH

Attorney for Movants Named

520 First National Bank Building
Macon, Georgia

APPENDIX G

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

WILLIAM B. HARTSFIELD,
Plaintiff

versus

JOHN SAMMONS BELL, as Chairman of the Georgia State Democratic Executive Committee;

GEORGE D. STEWART, as Secretary of the Georgia State Democratic Executive Committee;

THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE;

THE GEORGIA STATE DEMOCRATIC PARTY; and

BEN W. FORTSON, JR., as Secretary of State of the State of Georgia;

Defendants

CIVIL ACTION
No. 6385

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA:

This action is a civil case brought under Section 28, United States Code 2201 and 28 United States Code, 2202, seeking relief by declaratory judgment; under 42 United States Code 1983, seeking interlocutory and permanent injunction and equitable relief for the deprivation of constitutional rights, privileges and immunities. Jurisdiction

of this court is founded upon the provisions of Section 28, United States Code 1343. This is a proper case for determination by a Bench composed of three judges, as provided in 28 United States Code 2281, inasmuch as it seeks interlocutory and permanent injunction to restrain the enforcement, operation and execution of statutes of the State of Georgia by restraining an officer thereof, the Secretary of State, from complying with the provisions of such statutes.

STATEMENT OF THE COMPLAINT

1.

Petitioner is William B. Hartsfield, a citizen of the United States and of the State of Georgia, and a resident of Fulton County, which said County is located within the Atlanta Division of the Northern District of Georgia.

2.

Defendants are John Sammons Bell and George D. Stewart, who are residents of Fulton County, residing within the Atlanta Division of the Northern District of Georgia.

3.

Defendant, John Sammons Bell, is presently Chairman of the Georgia State Democratic Executive Committee, hereinafter called Defendant Committee, and the defendant, George D. Stewart, is presently the Secretary of said Committee—this action being brought against them in their official capacities, for relief against them and their successors in office.

4.

Defendant Committee is an unincorporated association composed of persons residing throughout the State of Georgia and is the governing body of the Defendant Democratic Party of Georgia (hereinafter referred to as Defendant Party). Defendant Party is an unincorporated association

composed of thousands of residents residing throughout the State of Georgia.

5.

The Defendant Committee is recognized under pertinent statutes of the State of Georgia as the governing body of Defendant Party, and is charged by such statutes with certain duties and responsibilities, as more fully hereinafter set forth.

6.

This action is brought against Defendant Committee and Defendant Party for the purpose of enforcing certain constitutional rights, privileges and immunities of the plaintiff. By reason of the number of persons comprising defendants Committee and Party, it is impracticable to serve each such person individually, but service upon each of the two said defendants may be made by serving the Chairman and Secretary thereof, as hereinabove set forth, and said defendants will be adequately represented in this action by and through its aforesaid executive officers.

7.

Defendant, Ben W. Fortson, Jr., is a resident of Wilkes County, Georgia, but maintains a residence in Fulton County in the Atlanta Division of the Northern District of Georgia. Said defendant is presently Secretary of State of the State of Georgia.

8.

Plaintiff is within that class of persons qualified as electors within the meaning of Article II, Section I, paragraphs I - IV of the Constitution of Georgia (Section 2-701 through 2-704, Georgia Code Annotated), said constitutional provisions appearing in Exhibit "A" hereto.

9.

Plaintiff is qualified to vote in primary and general elec-

tions for nomination of State officers in Fulton County, Georgia, is a member of the Democratic Party of Georgia, intends to vote in the Democratic Primary election to be held within the State of Georgia in 1958, and intends to support the nominees of such Primary Election in the General Election to be held in Georgia in 1958.

10.

Defendant Party is planning to hold in the year 1958, a primary election for nomination of candidates for the following statewide officers of the State of Georgia: Governor, Lieutenant Governor, Secretary of State, Justice of the Supreme Court, Judge of the Court of Appeals, Attorney General, Comptroller General, Commissioner of Labor and Treasurer.

11.

Defendant Committee, as the governing body of Defendant Party, and in accordance with the provisions of Section 34-3212, Georgia Code Annotated, is planning to fix and establish a date upon which the said primary election will be held, to supervise the holding thereof, to tabulate and consolidate the ballots cast therein, and to certify, in accordance with Section 34-3215.1, Georgia Code Annotated, to the defendant, Fortson, as Secretary of State, the names of persons determined by said Committee to have been nominated in said primary election. The statutes referred to hereinabove are set out in Exhibit "B".

12.

Defendant Fortson, as Secretary of State, in accordance with the provisions of Section 40-601 (7) Georgia Code Annotated (set out in Exhibit "C") is intending to furnish to the several ordinaries of the State of Georgia official ballots and election supplies, and to certify to said ordinaries, respectively, the names of candidates for the aforesaid statewide offices nominated in the Democratic Primary election.

13.

Under the provisions of Section 34-1904 Georgia Code Annotated (set out in Exhibit "D") the several ordinaries will submit such ballots and the names of those candidates so certified by Defendant Fortson, as Secretary of State, to the electors of the State of Georgia for their choice in the general election that will be held in Georgia for the aforesaid statewide offices on the Tuesday after the first Monday in November, 1958.

14.

Nomination as candidate for statewide office by Defendant Party is the equivalent of election to such office in Georgia and no candidate for any of the aforesaid statewide offices other than the nominee of defendant Democratic Party has been elected to office since 1872.

15.

Petitioner contends that the means of tabulating the popular vote and, specifically, the means of tabulating the vote which he as a voter in Fulton County intends to cast in the forthcoming Democratic Primary election (as governed by the provisions of Section 34-3212 Georgia Code Annotated) is arbitrary, discriminatory and unconstitutional, in that the intended acts of defendants in compliance with such statute is a deprivation of his constitutional rights and a denial to him of the equal protection of the laws, all as more fully hereinafter set forth.

16.

The means of tabulating the votes to be cast in the forthcoming Democratic Primary election, including the vote to be cast by petitioner, is known as the County Unit System, being incorporated in the statute law of this State by the Act of 1917 (Georgia Laws 1917, pages 183 through 189, codified as Sections 34-3213 through 34-3218 Georgia Code

Annotated) said act being popularly referred to as the Neill Primary Act. The salient provisions thereof are as follows:

> "... Candidates for nominations to the above named offices who receive, respectively, the highest number of popular votes in any given County shall be considered to have carried such County, and shall be entitled to the full vote of such County on the County Unit basis, that is to say, two votes for each representative to which such County is entitled in the lower House of the General Assembly ..." (Georgia Code of 1933, Section 34-3212, codified from Georgia Laws 1917, pp. 183-189).

> "... the majority of the County Unit vote shall be the determining factor for the nomination of United States Senator and Governor and ... the plurality of the County Unit vote shall be the determining factor for the nomination to all other offices named in Section 34-3212." (Georgia Code of 1933, Section 34-3213, codified from Georgia Laws, 1917, pp. 183-187).

The composition of the lower House of the General Assembly of Georgia is fixed constitutionally as follows:

> "The House of Representatives shall consist of representatives apportioned among the several counties of the State as follows: To the eight counties having the largest population, three representatives each; to the thirty counties having the next largest population, two representatives each; and to the remaining counties, one representative each."
>
> (Article III, Section III, paragraph I of the Constitution of Georgia of 1945, codified as Section 2-1501 Georgia Code Annotated.)

Accordingly, under the County Unit System, the eight largest counties by population have six unit votes each; the 30 next largest by population have four unit votes each; and the remainder, being 121 in number, have two unit votes each.

18.

Fulton County, wherein petitioner resides and intends to

cast his vote in the forthcoming Democratic Primary, is the most populous county in Georgia, having, according to the 1950 United States Census a population of 473,572, and according to the survey conducted by the Department of Health of the State of Georgia, a population of 561,000 as of July, 1957. A copy of said survey is attached hereto as Exhibit "E".

19.

According to the aforementioned sources, the total population of Georgia in 1950 was 3,444,578, and in 1957 was 3,866,000. The residents of Fulton County comprised in 1950 13.7% of the total population of the State of Georgia, and, in 1957, comprised 14.5% of said population.

20.

Under the County Unit System, the six unit votes of Fulton County constitute 1.46% of the total of 410 unit votes of all 159 counties of Georgia, or one-tenth Fulton County's percentage of statewide population.

21.

Echols County is the least populous county in Georgia, having a population in 1950 of 2,494 and in 1957 of 2,200, or, stated by percentage, .07% of the State's population in 1950 and .05% of said population in 1957.

22.

Under the County Unit System, the unit vote of Echols County is .48% of the total unit vote of all counties in Georgia, or eight times Echols County's statewide percentage of population.

23.

Chatham County is the second most populous county in the State of Georgia, having a population in 1957 of 156,000, representing 4.0% of the total population of Georgia, and having a unit vote of six, equal to that of Fulton County.

24.

Petitioner's vote, to be cast in Fulton County, is drastically diluted by tabulation and consolidation of votes under the County Unit System, as illustrated by the following examples:

A. The 2,494 residents of Echols County (1950 census) have two unit votes, or 1/3 of the unit votes of the 473,572 residents of Fulton County (1950 census). One unit vote in Echols County represents 1,247 residents, whereas one unit vote in Fulton County represents 78,928 residents. Stated differently, one resident in Echols County has the equivalent influence in the nomination of candidates in the Democratic Primary under the County Unit System of 63 residents in Fulton County.

According to the 1957 survey of the Georgia Department of Health, one unit vote in Echols County represents 1,100 residents, whereas one unit vote in Fulton County represents 93,500 residents, the disparity of influence in vote between single residents of the two counties being 85 to 1 in favor of the resident of Echols County.

B. The 186,700 residents of Chatham County, the second largest county in Georgia, are accorded six unit votes under the County Unit System, as are the 561,000 residents of Fulton County (1957 survey). Therefore, one resident of Chatham County has three times the influence in the nomination of statewide officers as does a single resident of Fulton County.

25.

Attached to this complaint are Exhibits "F" and "G", disclosing the population of each county in Georgia for the years 1920, 1930, 1940, 1950 and 1957, the respective unit votes of each county, and a figure designated "disparity factor," representing the weight, according to population, of one unit vote in each county as compared to one unit vote

in Fulton County; and Exhibits "H" and "I", disclosing the "disparity factor" for each county in Georgia as related to the votes cast in the most recent Democratic primary election held in 1954, in which a governor was nominated.

26.

Since the enactment of the Neill Primary Act in 1917, the population of Fulton County has steadily increased comprising of the total population of the State of Georgia 8.0% in 1920; 10.9% in 1930; 12.5% in 1940; 13.7% in 1950; and 14.5% in 1957. Notwithstanding such increase, Fulton County has been accorded but 1.46% of the unit vote in each statewide primary election held by the Defendant Democratic Party.

27.

The cited increase in population of Fulton County is indicative of similar increases in population of the urban communities of the State of Georgia since passage of the Neill Primary Act in 1917, as evidenced by the combined populations of the eight largest counties of Georgia according to each decennial United States Census since 1920 as follows:

Year	Total Population of State of Georgia	Combined Population of Eight Largest Counties of Georgia (6 unit vote counties)	Proportion of Population of Eight Largest Counties to Total Population
1920	2,895,832	620,668	21%
1930	2,908,506	787,305	27%
1940	3,123,723	938,958	30%
1950	3,444,578	1,227,161	36%
*	*	*	*
1957	3,866,000	1,523,600	39%

(Dept. of Health Survey — Civilian Population only)

Accordingly, although the eight six unit counties comprise among themselves 39% of the population of Georgia,

their total of unit votes (48) constitutes but 11.7% of the entire unit votes of the State of Georgia.

The urban population of the State of Georgia has continuously increased since passage of the Neill Primary Act in 1917, as evidenced by the following:

Nature of Population	1920	1930	1940	1950	1957
Urban	25.1	29.6	34.0	45.3	46.2
Rural	74.9	70.4	66.0	54.7	53.8

(Source: United States Census, 1920, 1930, 1940, 1950; Georgia Department of Health survey, 1957. "Urban Population" was defined, prior to 1950, as those inhabitants of incorporated areas of 2,500 or more; current definition eliminates the distinction between incorporated and unincorporated areas.)

The disparity created by the County Unit System will continue to increase with the increase of urban population in the State of Georgia.

28.

The disparity created by the County Unit System as evidenced by population is further demonstrated by voting statistics of the several counties of Georgia, as illustrated by the following:

A. In the most recent Democratic gubernatorial primary election, (1954), a total of 697 votes was cast in Echols County as compared to a total of 77,385 votes cast in Fulton County. By virtue of the County Unit System, each vote cast in Echols County had the equivalent weight and influence in the selection of the nominee of 37 votes cast in Fulton County.

B. In the aforesaid gubernatorial primary of 1954, a total of 191 votes were cast in Chattahoochee County (a county whose population is composed primarily of non-voting military personnel stationed at Fort Benning, Georgia). Thus, under the County Unit System, each vote cast

in Chattahoochee County was equivalent in weight and influence to 135 votes cast in Fulton County.

C. In the 1950 Democratic primary election, the successful candidate for nomination to the office of Governor received 49.3% of the popular vote, and the candidate most closely following him received 47.8%, a margin of 1.5% of the popular vote. Under the County Unit System, the successful candidate received 72% of the County Unit Votes of the several counties of Georgia, whereas his unsuccessful opponent received but 28%, being defeated by a margin of 44% of the County Unit Votes.

29.

The effect of the County Unit System is to reverse all votes in any one county cast against a candidate receiving the pluraility of votes in such county, and to accord in favor of such candidate all votes adversely cast. In the aforesaid gubernatorial primary of 1954, the successful candidate received 36.3% of the total popular vote, said percentage tabulated and consolidated under the County Unit System producing 73.6% of the total unit votes of the several counties. The said candidate received 25% of the votes cast in Fulton County in said primary, which percentage constituted a plurality. Accordingly, all six of Fulton County's unit votes were tabulated in favor of said candidate, notwithstanding the fact that 75% of the electors of Fulton County had cast votes adverse to his candidacy.

30.

Petitioner has no effective recourse against the dilution of his vote and against the cited disparities and inequalities of the County Unit System in the nature of legislative action, inasmuch as the composition of the lower House of the General Assembly of Georgia is the basis upon which the County Unit System is patterned (paragraph 17, supra) and it cannot reasonably be anticipated that the members thereof, exercising the same degree of control over the af-

fairs of the House of Representatives as their respective counties exercise in the nomination of candidates to statewide offices in primary elections, will be inclined voluntarily to diminish their own political influence or that of their constituents.

Petitioner shows that during the most recent session of the General Assembly of Georgia a bill was introduced in the House of Representatives by one of the three representatives of DeKalb County (the third most populous county in Georgia) which, if enacted, would have afforded a measure of relief to petitioner and to residents of other urban counties by according to the larger counties more nearly proportionate voting influence in primary elections; that the said bill was referred to a committee of the House from which it never emerged. Opposition to the bill was publicly justified by the Chairman of the House Committee to which it was referred (the representative of Brooks County) on the ground that the bill, if enacted, would "dilute the vote of the folks of Brooks County." Brooks County enjoys a disparity factor of 11.0 over Fulton County, as appears in Exhibit "F" hereto.

31.

The disparity created by the County Unit System between the weight and influence of the vote of petitioner, as a resident of Fulton County, and the votes of others throughout the State of Georgia constitutes the deprivation of his right of franchise and the denial of his right to vote. The County Unit System abridges the right of petitioner and others in Fulton County to vote, while it increases the weight and influence of votes cast in every other county of the State. This disparity, the result and effect of statutes of the State of Georgia, is the denial to this petitioner by the State of Georgia of equal protection of the laws.

32.

The provisions of Sections 34-3212 through 34-3218 Geor-

gia Code Annotated, governing the counting, tabulation and consolidation of votes cast in primary elections within the State of Georgia on the County Unit basis, and those provisions thereof requiring the certification and publication of the names of parties deemed nominees on the basis of the County Unit System, are unconstitutional, void and violative of the provisions of the Constitution of the United States, specifically Section 1 of the 14th Amendment thereto, in that, as applied to a primary election for nominees for statewide offices they constitute the denial by the State of Georgia to persons within its jurisdiction and to this plaintiff of equal protection of the laws.

33.

Said Sections 34-3212 through 34-3218, Georgia Code Annotated, as applied to primary elections for nomination to statewide offices constitute discrimination against this petitioner and places him in a class of persons discriminated against—all without justifiable or reasonable basis. Said statutes of the State of Georgia create arbitrary and unconstitutional classifications among voters of the State based solely upon geographic location of residents and character of domicile (i.e., urban or rural) and deprive this petitioner, as a resident of a populous urban county of his basic and constitutional rights.

34.

The provisions of Sections 34-3212 through 34-3218, Georgia Code Annotated, governing the counting, tabulation and consolidation of votes on the County Unit basis, as applied to primary elections, is violative of that provision of Section I of the 14th Amendment of the Constitution of the United States that no state shall deprive any person of ". . . liberty or property without due process of law"—the dilution, dimunition and abridgement by virtue of said statutes of plaintiff's vote and of his right to vote constituting deprivation of plaintiff's liberty and property by the State of Georgia without due process of law.

35.

Petitioner brings this action to prevent defendants from carrying out the unconstitutional and void provisions of the County Unit System by complying with the provisions of Sections 34-3212 through 34-3218, Georgia Code Annotated, in the forthcoming Democratic Primary election, and shows to the Court that unless defendants be restrained by interlocutory and permanent injunction from acting in accordance with said provisions, and unless said provisions be declared by this Court to be unconstitutional and void, petitioner's basic and constitutional right to vote will be abridged and denied him. This action is brought by petitioner on his own behalf and on behalf of others similarly situated.

36.

Petitioner is without adequate remedy at law, inasmuch as the Supreme Court of Georgia in the case of COX v. PETERS, et al, 208 Ga., 498 (Appeal dismissed, 342 U. S., 936; 96 L. ed., 697 (1951)) has held that an action at law for damages will not lie in favor of one aggrieved by reason of the application of the County Unit System.

37.

The plaintiff is unable to show the Court the exact date upon which the Defendants Committee and Party will hold said primary election, although defendants Stewart and Bell have hitherto made public announcements that a primary election for statewide offices will be held in 1958.

38.

Petitioner shows that about 1898, the party primary as a basis for nominating candidates for statewide offices by the Democratic Party came into full effect.

39.

Plaintiff is moving at this time in order to prevent the

use of the County Unit System in the forthcoming primary by asserting its constitutional invalidity in sufficient time to prevent this bill from becoming moot because of the prior action by the defendants in conformity with the statutes establishing and enforcing the County Unit System as herein pled. If the equitable jurisdiction of this Court is not invoked within time, or unless this plaintiff's rights are not declared in advance of the holding of the primary, the plaintiff's constitutional rights will have been abridged and under the previous decisions of the Supreme Court of the United States, he will have no equitable remedy or redress.

WHEREFORE, petitioner prays:

(a) That this, his bill in equity for interlocutory and permanent injunction and petition for declaratory judgment, be sanctioned and ordered filed;

(b) That defendants be required to show cause on a stated date why the relief herein prayed for should not be granted;

(c) That a Court consisting of three judges be convened at the earliest possible date to hear and determine the matters herein;

(d) That interlocutory and permanent injunction issue against each of the defendants, restraining and enjoining them as follows:

1. That the Defendant Party be restrained and enjoined from tabulating ballots cast in the forthcoming Democratic Primary election and in any primary election hereafter conducted by said Defendant Party on the basis of the County Unit System; that it be restrained and enjoined from selecting any nominee on the basis of ballots cast in any primary election hereafter held on the County Unit System; and that it be enjoined and restrained from publishing or certifying, by and through its officers or executives, the nomination of any candidate for the aforesaid state offices on the basis of the County Unit System;

2. That the defendants, John Sammons Bell and George D. Stewart, in their representative capacities as officers of the defendant Committee, and their successors in office, be enjoined and restrained from conducting or governing any primary election on the County Unit basis, from supervising the tabulation and consolidation of votes cast in any primary election on the County Unit basis, from certifying and publishing the names of any candidates deemed nominated in any primary election conducted on the County Unit System, and from giving force and effect to those provisions of the said Neill Primary Act shown herein to be void and unconstitutional.

3. That defendant, Ben W. Fortson, Jr., as Secretary of State, and his successors in office, be enjoined and restrained from certifying to the several ordinaries of the State of Georgia the names of any candidates for nomination to statewide offices who shall have been nominated or deemed selected pursuant to the tabulation and consolidation of votes cast in any primary held by Defendant Party under the County Unit System; and that he be further enjoined and restrained from furnishing to the several ordinaries of the State of Georgia official ballots and other election supplies whereon nomination under the County Unit System is recognized.

(c) That the Court issue its declaratory judgment holding the aforecited provisions of Sections 34-3212 through 34-3218, Georgia Code Annotated to be void and unconstitutional insofar as the cited sections provide for the nomination by Defendant Party of any candidate for statewide office on the County Unit System;

(f) Petitioner further prays for such additional relief as shall to equity and justice appertain.

HEYMAN, ABRAM & YOUNG

By: MORRIS B. ABRAM

SMITH, SWIFT, CURRIE & MCGHEE

By: CHARLES L. WELTNER

OSGOOD O. WILLIAMS

MAURICE N. MALOOF

HEYMAN, ABRAM & YOUNG
1504 Healey Building
Atlanta 3, Georgia

SMITH, SWIFT, CURRIE & MCGHEE
1405 Fulton National Bank Building
Atlanta 3, Georgia

OSGOOD O. WILLIAMS
1018 Healey Building
Atlanta 3, Georgia

MAURICE N. MALOOF
1504 Healey Building
Atlanta 3, Georgia

GEORGIA,

FULTON COUNTY.

Personally before the undersigned, an officer of the State authorized to administer oaths, came WILLIAM B. HARTSFIELD, who first being duly sworn, on oath says that he has read the within and foregoing petition, and the facts and things stated in said petition are true.

WM. B. HARTSFIELD

Sworn to and subscribed before
me this 13 day of March, 1958.

FRANCIS P. CRAWFORD
Notary Public, State at Large

EXHIBIT A

2-701. Paragraph I. Elections by ballot; registration of voters.—Elections by the people shall be by ballot, and only those persons shall be allowed to vote who have been first registered in accordance with the requirements of law.

2-702. Paragraph II. Who shall be an elector entitled to register and vote.—Every citizen of this State who is a citizen of the United States, eighteen years old or upwards, not laboring under any of the disabilities named in this Article, and possessing the qualifications provided by it, shall be an elector and entitled to register and vote at any election by the people: Provided, that no soldier, sailor or marine in the military or naval services of the United States shall acquire the rights of an elector by reason of being stationed on duty in this State.

2-703. Paragraph III. Who entitled to register and vote.—To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and in the county in which he offers to vote six months next preceding the election.

2-704. Paragraph IV. Qualifications of electors. — Every citizen of this State shall be entitled to register as an elector, and to vote in all elections in said State, who is not disqualified under the provisions of Section II of Article II of this Constitution, and who possesses the qualifications prescribed in Paragraphs II and III of this Section or who will possess them at the date of the election occurring next after his registration, and who in addition thereto comes within either of the classes provided for in the two following subdivisions of this paragraph.

1. All persons who are of good character and understand the duties and obligations of citizenship under a republican form of government; or

2. All persons who can correctly read in the English

language any paragraph of the Constitution of the United States or of this State and correctly write the same in the English language when read to them by any one of the registrars, and all persons who solely because of physical disability are unable to comply with the above requirements but who can understand and give a reasonable interpretation of any paragraph of the Constitution of the United States or of this State that may be read to them by any one of the registrars.

(Georgia Code Annotated, Sections 2-701 through 2-704, Article II, Section 1, Paragraphs I - IV, Constitution of the State of Georgia.)

EXHIBIT B

34-3212. County unit vote.—Whenever any political party shall hold primary elections for nomination of candidates for United States Senator, Governor, Statehouse officers, Justices of the Supreme Court, and Judges of the Court of Appeals, such party or its authorities shall cause all candidates for nominations for said offices to be voted for on one and the same day throughout the State, which is hereby fixed as the second Wednesday in September of each year in which there is a regular general election. Candidates for nominations to the above-named offices who receive, respectively, the highest number of popular votes in any given county shall be considered to have carried such county, and shall be entitled to the full vote of such county on the county unit basis, that is to say, two votes for each representative to which such county is entitled in the lower House of the General Assembly. If in any county any two or more candidates shall tie for the highest number of popular votes received, the county unit vote of such county shall be equally divided between the candidates so tying. All such county unit votes shall within 10 days after such primary be accurately consolidated by the chairman and secretary of the State committee of the political party holding such primary, and published in a newspaper published at the Capital, within three days after the completion of the consolidation, certified under the hands and seals of said chairman and secretary; and the candidates for said offices, respectively, who shall receive a majority of all the county unit votes, throughout the entire state, upon the basis above set forth, shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominees of such party for the above-named offices, respectively, and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary

thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held as the duly nominated candidates of such party for the offices named: Provided, that in the event there are only two candidates for any particular office referred to in this section, and it shall appear, after the consolidation of all of the county unit votes throughout the State, that said candidates have received an equal number of county unit votes, the one who shall have received a majority of the popular votes shall be declared by the State convention of party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for such office; and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the name of such successful candidate shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidate shall be considered, deemed and held as the duly nominated candidate of such party for the office named: provided, further, that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party.

34-3213. Second primary election.—In the event that, after such consolidation of all the county unit votes throughout the State, it shall be made to appear that in the contest for any one or more of said offices, no candidate has received a majority of all of the county unit votes throughout the State, upon the basis as above set forth, and it shall further appear that there are more than two candidates for any one or more of said offices, such political party shall hold a second primary election throughout the State

on the first Wednesday in October following such first primary election, and in such second primary election only the two candidates ascertained to have received the highest number of county unit votes at the first primary election for any particular office shall be voted for; and the vote shall be consolidated and the result declared and certified within 10 days after said second primary election, and published in a newspaper published at the Capital within three days after the completion of such consolidation, certified under the hand and seal of said chairman or secretary; and the candidate who shall receive a majority of the county unit votes throughout the State shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for the particular office for which he is a candidate; and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held to be the duly nominated candidates of such party for the offices named: Provided, that if both candidates for any office in said second primary election shall receive an equal number of county unit votes, after the consolidation of all of the county unit votes of all the counties, said State convention or the permanent chairman thereof, or the secretary thereof, or other authority of such party, shall declare the candidate receiving the majority of the popular votes cast the regular nominee of such party for that particular office: Provided, further, that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party: Provided, further, that said second pri-

mary election shall not affect the nomination of any candidate or candidates for any one of said offices who shall have received a majority of the county unit votes at the first primary election, and said second primary election shall be held only for the purpose of deciding contests for offices in which no candidate shall have received a majority of the county unit votes at the first primary election: Provided, further, that in the event there shall be more than two candidates in the first primary and any two candidates shall tie in said first primary for the next or second highest number of county unit votes received, the candidate who shall receive the highest number of popular votes in said first primary, as between said two candidates so tying, shall make the contest in said second primary, against the candidate who shall have received in said first primary the highest number of county unit votes; and in the event any three or more candidates shall tie in said first primary for the highest number of county unit votes, the two candidates (among said candidates so tying for the highest number of county unit votes) who shall have received the highest number of popular votes in said first primary, shall make the contest against each other in said second primary: Provided, further, that all of the provisions of this section relative to a second primary, in the event no candidate shall receive a majority of all of the county unit votes throughout the State in the first primary, shall apply only to the offices of United States Senator and Governor; and no second primary shall be necessary to decide finally the contest for any other office named in section 34-3212; and in the contest for all of said offices, except United States Senator and Governor, the candidates for such offices who shall receive the highest number of county unit votes, throughout the State, upon the basis above set forth, shall in like manner be declared the nominees of such party for said offices, respectively: Provided, further, that in the event, after such consolidation, it shall be made to appear that any two or more candidates for the same office (except in

contests for United States Senator and Governor) shall have received an equal number of county unit votes, the candidate or candidates who shall receive the highest number of popular votes throughout the State, shall, in like manner, be declared the nominee or nominees of such party for said offices, respectively; it being the intention of this proviso to provide that the majority of the county unit vote shall be the determining factor for the nomination of United States Senator and Governor and that the plurality of the county unit vote shall be the determining factor for the nomination to all other offices named in section 34-3212.

34-3214. Convention, when held.—In each regular election year in which a second primary shall be necessary, by reason of a failure of a candidate or candidates to receive a majority of the county unit votes at the first primary election, such party or its authority shall not hold its convention until after the expiration of 15 days from the date of such second primary election.

34-3215. Special primary elections to fill vacancies.—Special primary elections to fill vacancies in any of the offices referred to in this law shall be held on such date as may be fixed by the State executive committee of such party; but the same rules prescribed in this law for determining the result in general primary elections for the offices named shall govern in determining the result of any special primary election; and a second primary election shall be held within 15 days after the date of such first primary election, in the event no candidate receives a majority of all of the county unit votes throughout the State; and the same duties and obligations are hereby imposed upon the chairman, secretary, convention or other party authorities in the case of such special primary elections as are in this law imposed upon them in the case of general primary elections: Provided, that if no convention of such party shall be called or held, to follow a special primary election, the declaration of the result shall be made in such manner

as may be prescribed by the State committee or other authority of such party.

34-3216. Expenses; payment.—The expense of holding such primary elections shall be paid by the political party which causes the same to be held.

34-3217. Limitations.—Nothing in this law shall be construed to provide or require any definite unit of election for candidates for nominations for members of Congress, judges of the superior courts, solicitors general, members of the General Assembly and county officers; and this law shall not be construed to require a primary for any of the last named officials, except in their respective districts, circuits or counties, as provided by law: Provided, however, that primaries for nomination of members of Congress, judges of the superior courts, solicitors general and members of the General Assembly shall be held on the date named in section 34-3212 for primaries for United States Senator, Governor, Statehouse officers, Justices of the Supreme Court and Judges of the Court of Appeals.

34-3218. Laws of force.—All the laws in reference to the qualification of voters and their registration shall apply to said elections, and no person who is not a duly qualified and registered voter according to law and who is not also duly qualified in accordance with the rules and regulations of the party holding the same, shall be entitled to vote at any such primary election.

Georgia Code Annotated, Sections 34-3212 through 34-3218; Acts 1917, pp. 183, 184; Acts 1949, p. 967; Acts of 1950, pp. 79, 80.

EXHIBIT C

40-601 (7) Election blanks. Deciding conflicting claims to have names placed on ballot.—The Secretary of State shall furnish each ordinary of the State the form of official ballot, all blank forms, including tally sheets, blank lists of voters, forms of returns, certificates and directions to be used in all elections for United States Senate, Governor, electors of President and Vice President of the United States, representatives to Congress, Secretary of State, State Treasurer, Comptroller General, Attorney General, State Superintendent of Schools, Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior court, solicitor general, Public Service Commissioner, Commissioner of Labor, members of the General Assembly, and county officers. The Secretary of State shall certify to the respective ordinaries the names of all candidates for national and state offices who have qualified as such as provided in section 34-1904 and in case there are one or more persons purporting to represent the same political party or candidate it shall be the duty of the Secretary of State to determine such an issue. The ordinaries of the respective counties shall not be required to add any other names for national and state offices on the official ballot except upon certificate of the Secretary of State.

Georgia Code Annotated, Section 40-601(7), taken from Georgia Laws 1946, p. 753.

EXHIBIT D

34-1904. Ballots in elections other than primary elections.—In all elections other than primary elections held under the auspices of a political party, it shall be the duty of the ordinary to provide and furnish at the expense of the county, and in case of purely municipal elections, at the expense of the municipality, official ballots for all such elections, having printed thereon, in separate columns, the names of the candidates of each political party, designating the names of the political party to which they belong, and also the names of any other candidates for the offices to be filled at said election; and in case of election for President or Vice President of the United States, the names of the candidates for such offices may be added with the electors and party designation: Provided, however, that it shall not be the duty of said officers to place the names of any candidates on said official ballots, unless notice of their candidacy shall be given in the following manner, to wit: All candidates for national and State offices, or the proper authorities of the political party nominating them, shall file notice of their candidacy, giving their names and the offices for which they are candidates, with the Secretary of State, at least 30 days prior to the regular election, except in cases where a second primary election is necessary: Provided, further, that such candidate shall also file a petition for that purpose signed by not less than five per cent. of the registered voters in that territory or that such political party shall have cast no less than five per cent. of the votes in the last general election next preceding for the election of such officer; but nothing in this proviso shall be construed as applying to special elections. The names of such candidates shall be filed with the Secretary of State as soon as possible after the determination of the result of said second primary. All candidates for district and county offices, either by themselves or by the proper authorities of the party nominating them, shall file notice of their candidacy

with the ordinary of the county at least 15 days before the regular election, and all candidates for municipal offices shall file notice of their candidacy, either by themselves or by the proper authorities of the party nominating them, with the mayor or other chief executive officer of the municipality at least 15 days before the regular election. In the event of the resignation or death of any nominee of any political party prior to the regular election, at which the name of said nominee is to appear on the official ballot, said vacancy in nomination shall be filled in such manner as may be determined by the proper authorities of such party. Said officers shall also have printed on said ballots such language as may be necessary for the voters to express their desires as to any question or matter which may be submitted at any such election. In all other particulars such ballots shall be arranged, printed, and prepared for regular elections as provided in section 34-1903: Provided, further, however, that at any general election at which electors of President and Vice President of the United States are to be elected, there shall be printed on the official ballot, in a separate column, the names of all candidates for State, national, and other offices to be filled at said election, except candidates for President and Vice President and electors of President and Vice President, who have qualified as hereinabove by this section required, under the official name of the political party nominating such candidates, which official name shall be printed directly above such separate column; and there shall also be printed on said official ballot, in separate column, the names of all candidates for electors of President and Vice President of the United States notice of whose candidacy has been filed with the Secretary of State by the proper authorities of the political party nominating them 20 days before such general election, together with the names of the candidates for President and Vice President nominated by the political party nominating such candidates for electors, each such list of nominees for electors and for President and Vice President to be printed in a

separate column under the official name of the political party nominating them, which official name shall be printed directly above each such separate column: Provided, further, that the requirements of this section as to the percentage of votes cast in the last general election and as to a petition signed by five per cent. of the voters shall not apply to candidates for electors of President and Vice President of the United States, but no person shall be entitled to have his name entered on the ballot as a candidate for such elector except as the nominee of a political party which has nominated candidates for President and Vice President: Provided, further, that any political party or candidate desiring to have a name or names placed upon the general election ballot and subject to the requirements of this section as to the percentage of votes cast in the last general election and as to a petition signed by five per cent. of the voters, shall accompany said petition with a sworn statement to the effect that each of the names appearing in said petition were duly qualified and registered voters at the last general election: Provided, further, that the party authorities certifying the names of candidates for electors of President and Vice President shall accompany such certification with an affidavit signed by each candidate for elector, stating that such candidate is not now and never has been a member of the Communist Party, and does not believe in or sympathize with the principles of such Communist Party.

The provisions of this section shall become operative and effective uniformly throughout the State immediately upon its passage and approval, and do not require the approval or recommendation of any grand jury.

The provisions of this section shall apply to all certifications of candidacy and petitions which may be on file with the Secretary of State at the time of the approval of this section, as well as to all certifications of candidacy and peti-

tions filed with the Secretary of State subsequent to the time of approval of this section.

If any part of this section is declared unconstitutional, it is the legislative intent that the remaining portions of the law remain effective. (Georgia Annotated Code, Supplement, Section 34-1904, taken from Georgia Laws 1922, p. 100, as amended in Georgia Laws 1943, p. 292.)

EXHIBIT E

ESTIMATED POPULATION, BY RACE, SEX AND AGE, GEORGIA, JULY 1, 1957
(State Totals Include Military Population)

Age Group	Total	White			Nonwhite		
		Total	Male	Female	Total	Male	Female
Total, all ages	3,866,000	2,733,000	1,353,700	1,379,300	1,133,000	540,500	592,500
Under 1 year	97,600	65,100	33,400	31,700	32,500	16,200	16,300
1 - 4 years	376,600	248,700	127,600	121.100	127,900	64,200	63,700
5 - 9 years	436,100	294,100	150,500	143,600	142,000	70,900	71,100
10 - 14 years	363,400	245,000	124,300	120,700	118,400	59,100	59,300
15 - 24 years	609,300	408,700	208,300	200,400	200,600	99,300	101,300
25 - 34 years	552,000	401,600	198,100	203,500	150,400	68,000	82,400
35 - 44 years	507,900	379,200	188,000	191,200	128,700	58,000	70,700
45 - 54 years	396,000	294,900	144,000	150,900	101,100	45,900	55,200
55 - 64 years	270,700	205,700	97,400	108,300	65,000	29,500	35,500
65 - 74 years	169,300	128,700	57,300	71,400	40,600	17,700	22,900
75 - 84 years	74,600	54,200	22,200	32,000	20,400	9,200	11,200
85 years and over	12,500	7,100	2,600	4,500	5,400	2,500	2,900

ESTIMATED TOTAL POPULATION BY RACE, BY URBAN AND RURAL, AND CIVILIAN POPULATION BY COUNTY AND INCORPORATED PLACES OF 2,500 OR MORE PERSONS, GEORGIA, JULY 1, 1957

Area	Total	White	Nonwhite
STATE TOTAL 1/	3,866,000	2,733,000	1,133,000
URBAN 2/	1,788,000	1,222,000	566,000
RURAL	2,078,000	1,511,000	567,000
STATE TOTAL CIVILIAN	3,794,000	2,670,000	1,124,000
Appling	13,900	11,100	2,800
Baxley	3,800	2,800	1,000
Atkinson	7,600	5,900	1,700
Bacon	9,600	8,400	1,200
Alma	3,100	2,700	400
Baker	5,200	1,900	3,300
Baldwin 3/	21,400	13,500	7,900
State Hospital	11,900	7,300	4,600
Milledgeville	10,300	5,600	4,700
Banks	5,900	5,600	300
Barrow	13,400	10,900	2,500
Winder	5,100	4,300	800
Bartow	29,100	24,800	4,300
Cartersville	8,100	6,100	2,000
Ben Hill	15,300	10,300	5,000
Fitzgerald	8,700	5,700	3,000
Berrien	13,300	11,400	1,900
Nashville	4,100	3,300	800
Bibb*	139,200	92,400	46,800
Macon	79,200	45,900	33,300
Bleckley	9,100	6,400	2,700
Cochran	4,000	2,800	1,200
Brantley	6,200	5,500	700
Brooks	17,000	8,800	8,200
Quitman	5,100	2,800	2,300
Cherokee	21,500	20,500	1,000
Canton	2,800	2,600	200
Clarke	42,200	31,900	10,300
Athens	33,600	24,500	9,100
Clay	5,200	1,600	3,600
Clayton*	32,600	27,700	4,900
College Park (Total in Fulton and Clayton)	19,100	15,500	3,600
(Part in Clayton)	5,500	5,500	0
Forest Park	7,300	6,600	700
Clinch*	6,500	4,400	2,100
Cobb*	81,600	74,400	7,200
Marietta	30,600	26,100	4,500
Coffee	25,800	19,400	6,400
Douglas	9,100	6,400	2,700
Colquitt	35,200	26,700	8,500
Moultrie	13,500	8,800	4,700
Columbia*	10,700	5,900	4,800
Cook	12,600	8,900	3,700
Adel	3,300	2,000	1,300
Coweta	28,600	18,000	10,600
Newnan	9,000	5,600	3,400
Crawford	5,500	2,200	3,300
Crisp	18,000	10,200	7,800
Cordele	10,600	5,600	5,000
Dade	8,400	8,300	100
Dawson	3,300	3,300	0
Decatur	24,900	13,500	11,400
Bainbridge	8,500	5,300	3,200
Dekalb*	194,500	176,000	18,500
Atlanta (Part in Dekalb)	44,100	40,900	3,200

ESTIMATED TOTAL POPULATION BY RACE, BY URBAN AND RURAL, AND CIVILIAN POPULATION BY COUNTY AND INCORPORATED PLACES OF 2,500 OR MORE PERSONS, GEORGIA, JULY 1, 1957
(CONT'D)

Area	Total	White	Nonwhite
Evans	6,300	3,700	2,600
Fannin	15,600	15,400	200
Fayette	7,900	5,300	2,600
Floyd 3/	66,700	57,000	9,700
Battey State Hospital	1,300	600	700
Rome	33,200	26,300	6,900
Forsyth	10,900	10,800	100
Franklin	13,800	12,100	1,700
Fulton*	561,000	387,000	174,000
Atlanta (Total in Fulton and Dekalb)	488,400	332,600	155,800
(Part in Fulton)	444,300	291,700	152,600
College Park (Total in Clayton and Fulton)	19,100	15,500	3,600
(Part in Fulton)	13,600	10,000	3,600
East Point	27,400	23,800	3,600
Hapeville	10,900	10,800	100
Gilmer	10,600	10,400	200
Glascock	3,000	2,200	800
Glynn	34,700	23,900	10,800
Brunswick	20,200	12,400	7,800
Gordon	19,400	18,200	1,200
Calhoun	3,500	2,900	600
Grady	18,700	12,200	6,500
Cairo	6,300	3,800	2,500
Greene	12,400	6,100	6,300
Greensboro	2,900	1,700	1,200
Gwinnett	34,900	31,600	3,300
Buford	3,600	2,800	800
Lawrenceville	3,400	2,900	500
Habersham	17,900	17,100	800
Hall	44,200	39,400	4,800
Gainesville	13,900	10,300	3,600
Hancock	10,100	2,600	7,500
Haralson	15,000	13,700	1,300
Tallapoosa	3,200	2,900	300
Harris	11,300	5,000	6,300
Hart	14,000	10,500	3,500
Hartwell	3,400	2,700	700
Heard	6,000	4,600	1,400
Henry	16,600	9,300	7,300
Houston	27,800	19,900	7,900
Perry	5,500	2,600	2,900
Warner Robins	10,900	10,300	600
Irwin	11,500	7,300	4,200
Ocilla	3,100	1,700	1,400
Jackson	18,600	15,800	2,800
Commerce	3,400	1,500	1,900
Jasper	6,700	2,900	3,800
Jeff Davis	9,700	7,500	2,200
Hazlehurst	3,400	2,600	800
Jefferson	18,400	7,600	10,800
Jenkins	9,400	4,400	5,000
Millen	3,900	2,200	1,700
Johnson	8,100	5,600	2,500
Jones	7,200	3,500	3,700
Lamar	10,500	6,300	4,200
Barnesville	4,700	2,900	1,800
Lanier	5,000	3,300	1,700
Laurens	34,100	20,000	14,100
Dublin	14,400	8,000	6,400
Lee	6,400	3,900	2,500
Liberty	19,000	12,000	7,000
Lincoln	5,900	3,900	2,000
Lowndes	23,000	15,000	8,000
Valdosta	15,000	10,000	5,000
Lumpkin	5,000	4,900	100
McDuffie	12,000	7,000	5,000
McIntosh	5,000	3,000	2,000
Macon	16,000	8,000	8,000
Madison	9,000	7,000	2,000
Marion	5,000	3,000	2,000
Meriwether	20,000	12,000	8,000
Greenville	1,000	0	1,000
Miller	5,000	3,000	2,000
Colquitt	1,000	0	1,000
Milton	5,000	3,000	2,000
Alpharetta	1,000	0	1,000
Mitchell	22,400	11,300	11,100
Camilla	4,600	2,000	2,600
Pelham	5,300	3,000	2,300
Monroe	10,500	5,500	5,000
Forsyth	3,700	2,100	1,600
Montgomery	6,900	4,000	2,900
Morgan	11,500	5,500	6,000
Murray	10,500	10,400	100
Muscogee*	139,200	106,100	33,100
Columbus	98,700	67,900	30,800
Newton	21,400	14,300	7,100
Covington	6,100	3,500	2,600
Porterdale	3,400	3,300	100
Oconee	6,700	5,100	1,600
Oglethorpe	8,500	4,800	3,700
Paulding	11,200	9,900	1,300
Peach	12,800	4,900	7,900
Fort Valley	8,200	3,200	5,000
Pickens	8,800	8,300	500
Pierce	10,800	8,300	2,500
Pike	7,400	4,100	3,300
Polk	32,900	27,500	5,400
Cedartown	10,300	8,800	1,500
Rockmart	4,100	3,500	600
Pulaski	8,300	4,400	3,900
Hawkinsville	3,600	2,300	1,300
Putnam	7,400	3,400	4,000
Eatonton	3,000	1,600	1,400
Quitman	2,800	1,000	1,800
Rabun	7,300	7,100	200
Randolph	12,200	4,400	7,800
Cuthbert	4,400	1,600	2,800
Richmond*	153,400	105,400	48,000
Augusta	96,600	56,600	40,000
Rockdale	9,100	6,400	2,700
Schley	3,500	1,400	2,100
Screven	16,700	7,300	9,400
Sylvania	3,200	1,800	1,400
Seminole	7,600	4,700	2,900
Donaldsonville	3,200	1,900	1,300
Spalding	33,100	24,300	8,800
Griffin	21,500	14,100	7,400
Stephens	19,200	16,600	2,600
Toccoa	7,700	6,200	1,500
Stewart	8,400	2,300	6,100
Sumter	24,300	11,700	12,600
Americus	12,900	6,500	6,400
Talbot	7,500	2,200	5,300
Manchester (Total in Talbot and Merriwether)	4,500	3,300	1,200
(Part in Talbot)	100	0	100
Taliaferro	3,500	1,200	2,300
Tattnal 3/	13,700	10,500	3,200
Tattnal State Prison	2,200	1,200	1,000
Taylor	8,200	4,200	4,000
Telfair	12,200	8,100	4,100
Terrell	13,000	4,600	8,400

ESTIMATED POPULATION BY RACE, BY URBAN AND RURAL, AND CIVILIAN POPULATION BY RACE, BY COUNTY AND INCORPORATED PLACES OF 2,500 OR MORE PERSONS, GEORGIA, JULY 1, 1957
(CONT'D)

Area	Total	White	Nonwhite	Area	Total	White	Nonwhite
Walker	43,300	40,400	2,900	Webster	3,700	1,200	2,500
Lafayette	5,900	5,400	500	Wheeler	5,600	3,700	1,900
Rossville	4,500	4,500	0	White	5,700	5,300	400
Walton	20,200	13,800	6,400	Whitfield	40,200	38,300	1,900
Monroe	5,600	4,000	1,600	Dalton	19,200	17,800	1,400
Ware	32,300	23,600	8,700	Wilcox	8,600	5,800	2,800
Waycross	22,300	14,500	7,800	Wilkes	10,800	5,100	5,700
Warren	8,000	2,900	5,100	Washington	4,000	1,800	2,200
Washington	19,300	8,300	11,000	Wilkinson	9,100	4,700	4,400
Sandersville	5,100	2,100	3,000	Worth	18,400	9,100	9,300
Wayne	15,300	12,300	3,000	Sylvester	3,000	1,700	1,300
Jesup	5,800	4,000	1,800				

* Because of problems peculiar to these counties a method other than straight line projection and natural increase was used.

1/ Military population is excluded from the county totals but included in the state total.

2/ The Urban population is the total of the estimates for all incorporated places shown above plus the military population of the state.

3/ Population of state institutions is excluded from the county totals but is included in the state totals.

Source: Georgia Department of Public Health, Statistics.

METHOD USED IN PREPARING ESTIMATES OF THE POPULATION OF GEORGIA AS OF JULY 1, 1957

I. The final state civilian total was estimated by averaging the results of three separate estimates obtained by:

A. Elementary school enrollment percentage change

B. Arithmetic Projection

C. Natural increase

II. County estimates were made as follows:

A. First estimate - arithmetic projection of the 1950 census count to July 1, 1956 plus one year natural increase.

B. Adjustments of the figures obtained in A were made for certain counties where it was believed that the arithmetic projection and natural increase figures were inadequate. (These adjustments were usually made for counties with large urban populations or military establishments)

C. The county estimates obtained in A and B were added to give a provisional state total

D. The difference in the provisional and final state totals was distributed prorata among all counties to arrive at final county total estimates.

III. City estimates were made as follows:

A. For most cities the arithmetic projection of the 1950 census count to July 1, 1956 plus one year natural increase was used to obtain the totals.

B. For a few of the larger cities and for cities where unusual increase is indicated an average of totals obtained by elementary school enrollment percentage change, arithmetic projection and natural increase was used to obtain totals.

EXHIBIT F

County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1957(3)		
APPLING:														
2	10,594	7.3	2	13,314	8.0	2	14,497	9.0	2	14,003	11.3	22	13,900	13.5
ATKINSON:														
2	7,656	10.1	2	6,894	15.4	2	7,093	18.5	2	7,362	21.4	2	7,600	24.6
BACON:														
2	6,460	12.0	2	7,055	15.1	2	8,096	16.2	2	8,940	17.7	2	9,600	19.5
BAKER:														
2	8,298	9.3	2	7,818	13.6	2	7,344	17.8	2	5,952	26.5	2	5,200	36.0
BALDWIN:														
2	19,791	3.9	4	22,878	9.3	4	24,190	10.8	4	29,706	10.6	4	33,300	11.2
BANKS:														
2	211,814	6.6	2	9,703	11.0	2	8,733	15.0	2	6,935	22.8	2	5,900	31.7
BARROW:														
2	13,188	5.9	2	12,401	8.6	2	13,064	10.0	2	13,115	12.0	2	13,400	14.0
BARTOW:														
4	24,527	5.0	4	25,364	8.4	4	25,283	10.4	4	27,370	11.5	4	29,100	12.9
BEN HILL:														
2	14,579	5.3	2	13,047	8.1	2	14,523	9.0	2	14,879	10.6	2	15,300	12.2
BERRIEN:														
2	15,573	5.0	2	14,646	7.4	2	15,370	8.5	2	13,966	11.3	2	13,300	14.1
BIBB:														
6	71,304	3.3	6	77,042	4.1	6	83,783	4.7	6	114,079	4.2	6	139,200	4.0
BLECKLEY:														
2	10,532	7.4	2	9,133	11.7	2	9,655	13.6	2	9,218	17.1	2	9,100	20.5
BRANTLEY:														
(1)			2	6,895	15.4	2	6,871	19.0	2	6,387	24.7	2	6,200	30.2
BROOKS:														
4	24,538	6.3	4	21,330	10.0	2	20,497	16.4	2	18,169	8.7	2	17,000	11.0
BRYAN:														
2	6,343	12.2	2	5,952	17.9	2	6,288	20.8	2	5,965	26.5	2	5,900	31.7
BULLOCH:														
4	26,133	5.9	4	26,509	8.0	4	26,010	10.1	4	24,740	12.8	4	24,300	15.4

EXHIBIT F (Cont'd)

County Unit Votes	1920 Population	1920 Disparity Factor	County Unit Votes	1930 Population	1930 Disparity Factor	County Unit Votes	1940 Population	1940 Disparity Factor	County Unit Votes	1950 Population	1950 Disparity Factor	County Unit Votes	1957(3) Population	1957(3) Disparity Factor
BURKE:														
4	30,836	5.0	4	29,224	7.3	4	26,520	9.9	4	23,458	13.5	4	21,900	17.1
BUTTS:														
2	12,327	6.3	2	9,345	11.4	2	9,182	14.3	2	9,079	17.4	2	9,100	20.5
CALHOUN:														
2	10,225	7.6	2	10,576	10.0	2	10,438	12.6	2	8,578	18.4	2	7,500	24.9
CAMDEN:														
2	6,969	11.1	2	6,338	16.8	2	5,910	22.2	2	7,322	21.6	2	8,700	21.5
CANDLER:														
2	9,226	8.4	2	8,991	11.8	2	9,103	14.4	2	8,063	19.6	2	7,500	24.9
CARROLL:														
4	34,752	4.5	4	34,272	6.2	4	34,156	7.3	4	34,112	9.3	4	34,600	10.8
CATOOSA:														
2	6,677	11.6	2	9,421	11.3	2	12,199	10.7	2	15,146	10.4	2	17,300	10.8
CHARLTON:														
2	4,536	17.1	2	4,381	24.2	2	5,256	25.0	2	4,821	32.7	2	4,700	39.8
CHATHAM:														
6	100,032	2.3	6	105,431	3.0	6	117,970	3.3	6	151,481	3.1	6	186,700	3.0
CHATTAHOOCHEE:														
2	5,266	14.7	2	8,894	11.9	2	15,138	8.7	2	12,149	13.0	2	1,200	155.8
CHATTOOGA:														
2	14,312	5.4	2	15,547	6.8	2	18,532	7.1	4	21,197	14.9	4	23,100	16.2
CHEROKEE:														
2	18,569	4.2	2	20,003	5.3	2	20,126	6.5	2	20,750	7.6	2	21,500	8.7
CLARKE:														
4	26,111	5.9	4	25,613	8.3	4	28,398	9.2	4	36,550	8.6	4	42,200	8.9
CLAY:														
2	7,557	10.3	2	6,943	15.3	2	7,064	17.7	2	5,844	27.0	2	5,200	36.0
CLAYTON:														
2	11,159	7.0	2	10,260	10.4	2	11,655	11.2	4	22,872	13.8	4	32,600	11.5
CLINCH:														
2	7,984	9.7	2	7,015	15.1	2	6,437	20.3	2	6,007	26.3	2	6,500	28.8
COBB:														
4	30,437	5.1	4	35,408	6.0	4	38,272	6.8	6	61,830	7.7	6	81,600	6.9
COFFEE:														
2	18,653	4.2	2	19,739	5.4	4	21,541	12.2	4	23,961	13.2	4	25,800	14.5

EXHIBIT F (Cont'd)

County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1957(3)		
COLQUITT:														
4	29,332	5.3	4	30,622	6.9	4	33,012	7.9	4	33,999	9.3	4	35,200	10.6
COLUMBIA:														
2	11,718	6.6	2	8,793	12.1	2	9,433	13.9	2	9,525	16.6	2	10,700	17.5
COOK:														
2	11,180	6.9	2	11,311	9.4	2	11,919	11.0	2	12,201	12.9	2	12,600	14.8
COWETA:														
4	29,047	5.3	4	25,127	8.5	4	26,972	9.7	4	27,786	11.4	4	28,600	13.1
CRAWFORD:														
2	8,893	8.7	2	7,020	15.1	2	7,128	18.4	2	6,080	26.0	2	5,500	34.0
CRISP:														
2	18,914	4.1	2	17,343	6.1	2	17,540	7.5	2	17,663	8.9	2	18,000	10.4
DADE:														
2	3,918	19.8	2	4,146	25.6	2	5,894	22.2	2	7,364	21.4	2	8,400	22.3
DAWSON:														
2	4,204	18.4	2	3,502	30.4	2	4,479	29.2	2	3,712	42.5	2	3,300	56.7
DECATUR:														
4	31,785	4.9	4	23,622	9.0	4	22,234	11.8	4	23,620	13.4	4	24,900	15.0
DEKALB:														
	44,051	5.3	6	70,278	4.5	6	86,942	4.5	6	136,395	3.5	6	194,500	2.9
DODGE:														
4	22,540	6.9	4	21,599	9.9	2	21,022	6.2	2	17,865	8.8	2	16,000	11.7
DOOLEY:														
2	20,522	3.8	2	18,025	5.9	2	16,886	7.8	2	14,159	11.1	2	12,600	14.8
DOUGHERTY:														
	20,063	3.9	4	22,306	9.5	4	28,565	9.2	4	43,617	7.2	4	57,400	6.5
DOUGLAS:														
2	10,477	7.4	2	9,461	11.2	2	10,053	13.0	2	12,173	13.0	2	13,800	13.6
EARLY:														
2	18,983	4.1	2	18,273	5.8	2	18,679	7.0	2	17,413	9.1	2	16,800	11.1
ECHOLS:														
2	3,313	23.4	2	2,744	38.7	2	2,964	44.2	2	2,494	63.3	2	2,200	85.0
EFFINGHAM:														
2	9,985	7.8	2	10,164	10.5	2	9,646	13.6	2	9,133	17.3	2	8,900	21.0
ELBERT:														
4	23,905	6.5	2	18,485	5.8	2	19,618	6.7	2	18,585	8.5	2	18,200	10.3

ESTIMATED TOTAL POPULATION BY RACE, BY URBAN AND RURAL, AND CIVILIAN POPULATION BY COUNTY AND INCORPORATED PLACES OF 2,500 OR MORE PERSONS, GEORGIA, JULY 1, 1957

Area	Total	White	Nonwhite
STATE TOTAL 1/	3,866,000	2,733,000	1,133,000
URBAN 2/	1,788,000	1,222,000	566,000
RURAL	2,078,000	1,511,000	567,000
STATE TOTAL CIVILIAN	3,794,000	2,670,000	1,124,000
Appling	13,900	11,100	2,800
Baxley	3,800	2,800	1,000
Atkinson	7,600	5,900	1,700
Bacon	9,600	8,400	1,200
Alma	3,100	2,700	400
Baker	5,200	1,900	3,300
Baldwin 3/	21,400	13,500	7,900
State Hospital Milledgeville	11,900	7,300	4,600
	10,300	5,600	4,700
Banks	5,900	5,600	300
Barrow	13,400	10,900	2,500
Winder	5,100	4,300	800
Bartow	29,100	24,800	4,300
Cartersville	8,100	6,100	2,000
Ben Hill	15,300	10,300	5,000
Fitzgerald	8,700	5,700	3,000
Berrien	13,300	11,400	1,900
Nashville	4,100	3,300	800
Bibb*	139,200	92,400	46,800
Macon	79,200	45,900	33,300
Bleckley	9,100	6,400	2,700
Cochran	4,000	2,800	1,200
Brantley	6,200	5,500	700
Brooks	17,000	8,800	8,200
Quitman	5,100	2,800	2,300
Bryan	5,900	3,500	2,400
Bulloch	24,300	15,300	9,000
Statesboro	6,900	4,700	2,200
Burke	21,900	6,800	15,100
Waynesboro	5,000	2,300	2,700
Butts	9,100	4,900	4,200
Calhoun	7,500	2,400	5,100
Camden*	8,700	4,600	4,100
Candler	7,500	4,800	2,700
Carroll	34,600	27,800	6,800
Carrollton	8,900	7,100	1,800
Catoosa	17,300	16,800	500
Charlton	4,700	3,300	1,400
Chatham*	186,700	118,200	68,500
Savannah	137,000	81,500	55,500
Chattachooche*	1,200	600	600
Chattooga	23,100	20,800	2,300
Summerville	5,100	4,600	500
Trion	3,400	3,300	100
Cherokee	21,500	20,500	1,000
Canton	2,800	2,600	200
Clarke	42,200	31,900	10,300
Athens	33,600	24,500	9,100
Clay	5,200	1,600	3,600
Clayton*	32,600	27,700	4,900
College Park (Total in Fulton and Clayton)	19,100	15,500	3,600
(Part in Clayton)	5,500	5,500	0
Forest Park	7,300	6,600	700
Clinch*	6,500	4,400	2,100
Cobb*	81,600	74,400	7,200
Marietta	30,600	26,100	4,500
Coffee	25,800	19,400	6,400
Douglas	9,100	6,400	2,700
Colquitt	35,200	26,700	8,500
Moultrie	13,500	8,800	4,700
Columbia*	10,700	5,900	4,800
Cook	12,600	8,900	3,700
Adel	3,300	2,000	1,300
Coweta	28,600	18,000	10,600
Newnan	9,000	5,600	3,400
Crawford	5,500	2,200	3,300
Crisp	18,000	10,200	7,800
Cordele	10,600	5,600	5,000
Dade	8,400	8,300	100
Dawson	3,300	3,300	0
Decatur	24,900	13,500	11,400
Bainbridge	8,500	5,300	3,200
Dekalb*	194,500	176,000	18,500
Atlanta (Part in Dekalb)	44,100	40,900	3,200
(Total in Fulton and Dekalb)	488,400	332,600	155,800
Chamblee	5,800	5,600	200
Decatur	25,400	21,400	4,000
Dodge	16,000	11,300	4,700
Eastman	3,800	2,500	1,300
Dooly	12,600	6,000	6,600
Dougherty*	57,400	34,900	22,500
Albany	40,200	23,000	17,200
Douglas	13,800	11,700	2,100
Douglasville	4,000	3,200	800
Early	16,800	7,600	9,200
Blakely	3,600	2,500	1,100
Echols	2,200	1,700	500
Effingham	8,900	5,700	3,200
Elbert	18,200	12,600	5,600
Elberton	7,300	5,100	2,200
Emanuel	17,700	11,400	6,300
Swainsboro	4,800	3,000	1,800

See notes on last page

Hapeville	10,900	10,800	100	Peach	12,800	4,900	7,900
Gilmer	10,600	10,400	200	Fort Valley	8,200	3,200	5,000
Glascock	3,000	2,200	800	Pickens	8,800	8,300	500
Glynn	34,700	23,900	10,800	Pierce	10,800	8,300	2,500
Brunswick	20,200	12,400	7,800	Pike	7,400	4,100	3,300
Gordon	19,400	18,200	1,200	Polk	32,900	27,500	5,400
Calhoun	3,500	2,900	600	Cedartown	10,300	8,800	1,500
Grady	18,700	12,200	6,500	Rockmart	4,100	3,500	600
Cairo	6,300	3,800	2,500	Pulaski	8,300	4,400	3,900
Greene	12,400	6,100	6,300	Hawkinsville	3,600	2,300	1,300
Greensboro	2,900	1,700	1,200	Putnam	7,400	3,400	4,000
Gwinnett	34,900	31,600	3,300	Eatonton	3,000	1,600	1,400
Buford	3,600	2,800	800	Quitman	2,800	1,000	1,800
Lawrenceville	3,400	2,900	500	Rabun	7,300	7,100	200
Habersham	17,900	17,100	800	Randolph	12,200	4,400	7,800
Hall	44,200	39,400	4,800	Cuthbert	4,400	1,600	2,800
Gainesville	13,900	10,300	3,600	Richmond*	153,400	105,400	48,000
Hancock	10,100	2,600	7,500	Augusta	96,600	56,600	40,000
Haralson	15,000	13,700	1,300	Rockdale	9,100	6,400	2,700
Tallapoosa	3,200	2,900	300	Schley	3,500	1,400	2,100
Harris	11,300	5,000	6,300	Screven	16,700	7,300	9,400
Hart	14,000	10,500	3,500	Sylvania	3,200	1,800	1,400
Hartwell	3,400	2,700	700	Seminole	7,600	4,700	2,900
Heard	6,000	4,600	1,400	Donaldsonville	3,200	1,900	1,300
Henry	16,600	9,300	7,300	Spalding	33,100	24,300	8,800
Houston	27,800	19,900	7,900	Griffin	21,500	14,100	7,400
Perry	5,500	2,600	2,900	Stephens	19,200	16,600	2,600
Warner Robins	10,900	10,300	600	Toccoa	7,700	6,200	1,500
Irwin	11,500	7,300	4,200	Stewart	8,400	2,300	6,100
Ocilla	3,100	1,700	1,400	Sumter	24,300	11,700	12,600
Jackson	18,600	15,800	2,800	Americus	12,900	6,500	6,400
Commerce	3,400	1,500	1,900	Talbot	7,500	2,200	5,300
Jasper	6,700	2,900	3,800	Manchester (Total in Talbot and Merriwether)	4,500	3,300	1,200
Jeff Davis	9,700	7,500	2,200	(Part in Talbot)	100	0	100
Hazlehurst	3,400	2,600	800	Taliaferro	3,500	1,200	2,300
Jefferson	18,400	7,600	10,800	Tattnal 3/	13,700	10,500	3,200
Jenkins	9,400	4,400	5,000	Tattnal State Prison	2,200	1,200	1,000
Millen	3,900	2,200	1,700	Taylor	8,200	4,200	4,000
Johnson	8,100	5,600	2,500	Telfair	12,200	8,100	4,100
Jones	7,200	3,500	3,700	Terrell	13,000	4,600	8,400
Lamar	10,500	6,300	4,200	Dawson	4,900	2,100	2,800
Barnesville	4,700	2,900	1,800	Thomas	36,100	21,800	14,300
Lanier	5,000	3,300	1,700	Thomasville	16,400	9,000	7,400
Laurens	33,200	19,700	13,500	Tift	25,600	18,200	7,400
Dublin	12,000	7,200	4,800	Tifton	8,000	6,900	1,100
Lee	6,100	1,900	4,200	Toombs	17,900	12,700	5,200
Liberty*	9,800	4,000	5,800	Lyons	3,500	2,300	1,200
Lincoln	6,200	3,200	3,000	Vidalia	7,100	4,700	2,400
Long	3,400	2,200	1,200	Towns	4,800	4,700	100
Lowndes*	42,400	26,200	16,200	Treutlen	5,900	4,100	1,800
Valdosta	27,400	15,300	12,100	Troup	54,200	37,600	16,600
Lumpkin	6,900	6,700	200	Hogansville	3,800	2,500	1,300
Macon	13,300	4,700	8,600	LaGrange	28,200	19,600	8,600
Montezuma	3,300	1,300	2,000	West Point	4,600	1,800	2,800
Madison	11,600	9,300	2,300	Turner	10,400	6,300	4,100
Marion	6,300	2,300	4,000	Ashburn	3,400	2,100	1,300
Mc Duffie	12,000	6,700	5,300	Twiggs	7,900	3,100	4,800
Thomson	3,800	2,500	1,300	Union	7,200	7,200	0
McIntosh	6,500	2,400	4,100	Upson	25,000	19,100	5,900
Merriwether	20,700	10,300	10,400	East Thomaston	3,000	3,000	0
Manchester (Total in Talbot and Merriwether)	4,500	3,300	1,200	Silvertown	3,400	3,400	0
(Part in Merriwether)	4,400	3,300	1,100	Thomaston	7,600	5,100	2,500
Miller	8,500	6,100	2,400				

See notes on last page

METHOD USED IN PREPARING ESTIMATES OF THE POPULATION OF GEORGIA AS OF JULY 1, 1957

I. The final state civilian total was estimated by averaging the results of three separate estimates obtained by:

   A. Elementary school enrollment percentage change

   B. Arithmetic Projection

   C. Natural increase

II. County estimates were made as follows:

   A. First estimate - arithmetic projection of the 1950 census count to July 1, 1956 plus one year natural increase.

   B. Adjustments of the figures obtained in A were made for certain counties where it was believed that the arithmetic projection and natural increase figures were inadequate. (These adjustments were usually made for counties with large urban populations or military establishments)

   C. The county estimates obtained in A and B were added to give a provisional state total

   D. The difference in the provisional and final state totals was distributed prorata among all counties to arrive at final county total estimates.

III. City estimates were made as follows:

   A. For most cities the arithmetic projection of the 1950 census count to July 1, 1956 plus one year natural increase was used to obtain the totals.

   B. For a few of the larger cities and for cities where unusual increase is indicated an average of totals obtained by elementary school enrollment percentage change, arithmetic projection and natural increase was used to obtain totals.

IV. Race and age estimates:

   A. State total racial estimates are averages of figures obtained by the following methods:

      1. Elementary school enrollment percentage change

      2. Arithmetic projection

      3. Natural increase

   B. Percentage distribution of the population by race in each county and city was estimated by taking the following factors into consideration:

      1. Changes in racial distributions from 1940 to 1950

      2. Natural increase, 1950 - 1956, by race

      3. Elementary school enrollment percentage change, 1950 - 1956 by race

   C. Age distribution estimates by race and sex for the state total population was made by taking the following factors into consideration:

      1. Previous census age distributions

      2. Natural increase

V. Finally, county and city estimates by race were adjusted to add back to county, city and state totals.

EXHIBIT F (Cont'd)

County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1957(3)		
EMANUEL:														
4	25,862	6.0	4	24,101	8.8	4	23,517	11.1	2	19,789	8.0	2	17,700	10.6
EVANS:														
2	6,594	11.8	2	7,102	15.0	2	7,401	17.7	2	6,653	23.7	2	6,300	29.7
FANNIN:														
2	12,103	6.4	2	12,969	8.2	2	14,752	8.9	2	15,192	10.4	2	15,600	12.0
FAYETTE:														
2	11,396	6.8	2	8,665	12.2	2	8,170	16.0	2	7,978	19.8	2	7,900	23.7
FLOYD:														
6	39,841	5.8	6	48,667	6.5	6	56,141	7.0	6	62,899	7.5	6	68,000	8.3
FORSYTH:														
2	11,755	6.6	2	10,624	10.0	2	11,322	11.6	2	11,005	14.3	2	10,900	17.2
FRANKLIN:														
2	19,957	3.9	2	15,902	6.7	2	15,612	8.4	2	14,446	10.9	2	13,800	13.6
FULTON:														
6	232,606	1.0	6	318,587	1.0	6	392,886	1.0	6	473,572	1.0	6	561,000	1.0
GILMER:														
2	8,406	9.2	2	7,344	14.5	2	9,001	14.6	2	9,963	15.8	2	10,600	17.6
GLASCOCK:														
2	4,192	18.5	2	4,388	24.2	2	4,547	28.8	2	3,579	44.1	2	3,000	62.3
GLYNN:														
2	19,370	4.0	2	19,400	5.5	4	21,920	10.9	4	29,046	10.9	4	34,700	10.8
GORDON:														
2	17,736	4.4	2	16,846	6.3	2	18,445	7.1	2	18,922	8.3	2	19,400	9.6
GRADY:														
2	20,306	3.8	2	19,200	5.5	2	19,654	6.7	2	18,928	8.3	2	18,700	10.0
GREENE:														
2	18,972	4.1	2	12,616	8.4	2	13,709	9.6	2	12,843	12.3	2	12,400	15.1
GWINNETT:														
4	30,327	5.1	4	27,853	7.6	4	29,087	9.0	4	32,320	9.8	4	34,900	10.7
HABERSHAM:														
2	10,730	7.2	2	12,748	8.3	2	14,771	8.9	2	16,553	9.5	2	17,900	10.4
HALL:														
4	26,822	5.8	4	30,313	7.0	4	34,822	7.5	4	40,113	7.9	4	44,200	8.5
HANCOCK:														
2	18,357	4.2	2	13,070	8.1	2	12,764	10.3	2	11,052	14.3	2	10,100	18.5

EXHIBIT F (Cont'd)

County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1957(3)		
HARALSON:														
2	14,440	5.4	2	13,263	8.0	2	14,377	9.1	2	14,663	10.8	2	15,000	12.5
HARRIS:														
2	15,575	5.0	2	11,140	9.5	2	11,428	11.5	2	11,265	14.0	2	11,300	16.5
HART:														
2	17,944	4.3	2	15,174	7.0	2	15,512	8.4	2	14,495	10.9	2	14,000	13.4
HEARD:														
2	11,126	7.0	2	9,102	11.7	2	8,610	15.2	2	6,975	22.6	2	6,000	31.2
HENRY:														
2	20,420	3.8	2	15,924	6.7	2	15,119	8.7	2	15,857	10.0	2	16,600	11.3
HOUSTON:														
2	21,964	3.5	2	11,280	9.4	2	11,303	11.6	2	20,964	7.5	2	27,800	6.7
IRWIN:														
2	12,670	6.1	2	12,199	8.7	2	12,936	10.1	2	11,973	13.2	2	11,500	16.3
JACKSON:														
4	24,654	6.3	4	21,609	9.9	2	20,089	6.7	2	18,997	8.3	2	18,600	10.1
JASPER:														
2	16,362	4.7	2	8,594	12.4	2	8,772	14.9	2	7,473	21.1	2	6,700	27.9
JEFF DAVIS:														
2	7,322	10.6	2	8,118	13.1	2	8,841	14.8	2	9,299	17.0	2	9,700	19.3
JEFFERSON:														
4	22,602	6.9	2	20,727	5.1	2	20,040	6.5	2	18,855	8.4	2	18,400	10.2
JENKINS:														
2	14,328	5.4	2	12,908	8.2	2	11,843	11.1	2	10,264	15.4	2	9,400	19.9
JOHNSON:														
2	13,546	5.7	2	12,681	8.4	2	12,953	10.1	2	9,893	16.0	2	8,100	23.1
JONES:														
2	13,269	5.8	2	8,992	11.8	2	8,331	15.7	2	7,538	20.9	2	7,200	26.0
LAMAR:														
(1)			2	9,745	10.9	2	10,091	13.0	2	10,242	15.4	2	10,500	17.8
LANIER:														
(1)			2	5,190	20.4	2	5,632	23.2	2	5,151	30.6	2	5,000	37.4
LAURENS:														
6	39,605	5.9	4	32,693	6.5	4	33,606	7.8	4	33,123	9.5	4	33,200	11.3
LEE:														
2	10,904	7.1	2	8,328	12.8	2	7,837	16.7	2	6,674	23.7	2	6,100	30.7

EXHIBIT F (Cont'd)

County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1957(3)		
LIBERTY:														
2	12,707	6.1	2	8,153	13.0	2	8,595	15.2	2	8,444	18.7	2	9,800	19.1
LINCOLN:														
2	9,739	8.0	2	7,847	13.5	2	7,042	18.6	2	6,462	24.4	2	6,200	30.2
LONG:														
	(1)		2	4,180	25.4	2	4,086	32.1	2	3,598	43.9	2	3,400	55.0
LOWNDES:														
4	26,521	5.9	4	29,994	7.1	4	31,860	8.2	4	35,211	9.0	4	42,400	8.8
LUMPKIN:														
2	5,240	14.8	2	4,927	21.6	2	6,223	21.1	2	6,574	24.0	2	6,900	27.1
MCDUFFIE:														
2	11,509	6.7	2	9,014	11.8	2	10,878	12.0	2	11,443	13.8	2	12,000	15.6
MCINTOSH:														
2	5,119	15.2	2	5,763	18.4	2	5,292	24.8	2	6,008	26.3	2	6,500	28.8
MACON:														
2	17,667	4.4	2	16,643	6.4	2	15,947	8.2	2	14,213	11.1	2	13,300	14.1
MADISON:														
2	18,803	4.1	2	14,921	7.1	2	13,431	9.8	2	12,238	12.9	2	11,600	16.1
MARION:														
2	7,604	10.2	2	6,968	15.2	2	6,954	18.8	2	6,521	24.2	2	6,300	29.7
MERIWETHER:														
4	26,168	5.9	4	22,437	9.5	4	22,055	11.9	4	21,055	15.0	4	20,700	18.1
MILLER:														
2	9,565	8.1	2	9,076	11.7	2	9,998	13.1	2	9,023	17.5	2	8,500	22.0
MITCHELL:														
4	25,588	6.1	4	23,620	9.0	4	23,261	11.3	4	22,528	14.0	4	22,400	16.7
MONROE:														
2	20,138	3.8	2	11,606	9.1	2	10,749	12.2	2	10,523	15.0	2	10,500	17.8
MONTGOMERY:														
2	9,167	8.5	2	10,020	10.6	2	9,668	13.6	2	7,901	20.0	2	6,900	27.1
MORGAN:														
2	20,143	3.9	2	12,488	8.5	2	12,713	10.3	2	11,899	13.3	2	11,500	16.3
MURRAY:														
2	9,490	8.2	2	9,215	11.5	2	11,137	11.8	2	10,676	14.8	2	10,500	17.8
MUSCOGEE:														
6	44,195	5.3	6	57,558	5.5	6	75,494	5.2	6	118,028	4.0	6	139,200	4.0

EXHIBIT F (Cont'd)

County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1957(3)		
NEWTON:														
2	21,680	3.6	2	17,290	6.1	2	18,576	7.1	2	20,185	7.8	2	21,400	8.7
OCONEE:														
2	11,067	7.0	2	8,082	13.1	2	7,576	17.3	2	7,009	22.5	2	6.700	27.9
OGLETHORPE:														
2	20,287	3.8	2	12,927	8.2	2	12,430	10.5	2	9,958	15.9	2	8,500	22.0
PAULDING:														
2	14,025	5.5	2	12,327	8.6	2	12,832	10.2	2	11,752	13.4	2	11,200	16.7
PEACH:														
(1)			2	10,268	10.4	2	10,378	12.6	2	11,705	13.5	2	12,800	14.6
PICKENS:														
2	8,222	9.4	2	9,687	11.0	2	9,136	14.3	2	8,855	17.8	2	8,800	21.3
PIERCE:														
2	11,934	6.5	2	12,522	8.5	2	11,800	11.1	2	11,112	14.2	2	10,800	17.3
PIKE:														
2	21,212	3.7	2	10,853	9.8	2	10,375	12.6	2	8,459	18.7	2	7,400	25.3
POLK:														
2	20,357	3.8	4	25,141	8.5	4	28,467	9.2	4	30,976	10.2	4	32,900	11.4
PULASKI:														
	11,587	6.7	2	9,005	11.8	2	9,829	14.1	2	8,808	17.9	2	8,300	22.5
PUTNAM:														
2	15,151	5.1	2	8,367	12.7	2	8,514	15.4	2	7,731	20.4	2	7,400	25.3
QUITMAN:														
2	3,417	22.7	2	3,820	27.8	2	3,435	38.1	2	3,015	52.3	2	2,800	66.8
RABUN:														
2	5,746	13.5	2	6,331	16.8	2	7,821	16.7	2	7,424	21.3	2	7,300	25.6
RANDOLPH:														
2	16,721	4.6	2	17,174	6.2	2	16,609	7.9	2	13,804	11.4	2	12,200	15.3
RICHMOND:														
6	63,692	3.7	6	72,990	4.4	6	81,863	4.8	6	108,876	4.3	6	153,400	3.7
ROCKDALE:														
2	9,521	8.1	2	7,247	14.7	2	7,724	16.9	2	8,464	18.7	2	9,100	20.5
SCHLEY:														
2	5,243	14.8	2	5,347	19.9	2	5,033	26.0	2	4,036	39.1	2	3,500	53.4
SCREVEN:														
4	23,552	6.6	2	20,503	5.2	2	20,353	6.0	2	18,000	8.8	2	16,700	11.2

EXHIBIT F (Cont'd)

County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1957(3)		
SEMINOLE: (1)			2	7,389	14.4	2	8,492	15.4	2	7,904	20.0	2	7,600	24.6
SPALDING: 2	21,908	3.5	4	23,495	9.0	4	28,427	9.2	4	31,045	10.2	4	33,100	11.3
STEPHENS: 2	11,21[illegible]	6.9	2	11,740	9.0	2	12,972	10.1	2	16,647	9.5	2	19,200	9.7
STEWART: 2	12,089	6.4	2	11,114	9.6	2	10,603	12.4	2	9,194	17.2	2	8,400	22.3
SUMTER: 4	29,640	5.2	4	26,800	7.9	4	24,502	10.7	4	24,208	13.0	4	24,300	15.4
TALBOT: 2	11,158	7.0	2	8,458	12.6	2	8,141	16.1	2	7,687	20.5	2	7,500	24.9
TALLIAFERRO: 2	8,841	8.8	2	6,172	17.2	2	6,278	20.9	2	4,515	35.0	2	3,500	53.4
TATTNALL: 2	14,502	5.3	2	15,411	6.9	2	16,243	8.1	2	15,939	9.9	2	15,900	11.8
TAYLOR: 2	11,473	6.8	2	10,617	10.0	2	10,768	12.2	2	9,113	17.3	2	8,200	22.8
TELFAIR: 2	15,291	5.1	2	14,997	7.1	2	15,145	8.7	2	13,221	11.9	2	12,200	15.3
TERRELL: 2	19,601	4.0	2	18,290	5.8	2	16,675	7.9	2	14,314	11.0	2	13,000	14.4
THOMAS: 4	33,044	4.7	4	32,612	6.5	4	31,289	8.4	4	33,932	9.3	4	36,100	10.4
TIFT: 2	14,493	5.4	2	16,068	6.6	2	18,599	7.0	4	22,645	13.9	4	25,600	14.6
TOOMBS: 2	13,897	5.6	2	17,165	6.2	2	16,952	7.7	2	17,382	9.1	2	17,900	10.4
TOWNS: 2	3,937	19.7	2	4,346	24.5	2	4,925	26.6	2	4,803	32.9	2	4,800	39.0
TREUTLEN: 2	7,664	10.1	2	7,488	14.2	2	7,632	17.2	2	6,522	24.2	2	5,900	31.7
TROUP: 4	36,097	4.3	6	36,752	8.7	6	43,879	9.0	4	49,841	6.3	4	54,200	6.9
TURNER: 2	12,466	6.2	2	11,196	9.5	2	10,846	12.1	2	10,479	15.1	2	10,400	18.0
TWIGGS: 2	10,407	7.4	2	8,372	12.7	2	9,117	14.4	2	8,308	19.0	2	7,900	23.7

EXHIBIT F (Cont'd)

County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1957(3)		
UNION:														
2	6,455	12.0	2	6,340	16.8	2	7,680	17.1	2	7,318	21.6	2	7,200	26.0
UPSON:														
2	14,786	5.2	2	19,509	5.4	4	25,064	10.4	4	25,078	12.6	4	25,000	15.0
WALKER:														
4	23,370	6.6	4	26,206	8.1	4	31,024	8.4	4	38,198	8.3	4	43,300	8.6
WALTON:														
4	24,216	6.4	4	21,118	10.1	2	20,777	6.3	2	20,230	7.8	2	20,200	9.3
WARE:														
4	28,361	5.5	4	26,558	8.0	4	27,929	9.4	4	30,289	10.4	4	32,300	11.6
WARREN:														
2	11,828	6.6	2	11,181	9.6	2	10,236	12.8	2	8,779	18.0	2	8,000	23.4
WASHINGTON:														
4	28,147	5.5	4	25,030	8.5	4	24,230	10.8	2	21,012	7.5	2	19,300	9.7
WAYNE:														
2	14,381	5.4	2	12,647	8.4	2	13,122	10.0	2	14,248	11.1	2	15,300	12.2
WEBSTER:														
2	5,342	14.5	2	5,032	21.2	2	4,726	27.8	2	4,081	38.7	2	3,700	50.5
WHEELER:														
2	9,817	7.9	2	9,149	11.6	2	8,535	15.3	2	6,712	23.5	2	5,600	33.4
WHITE:														
2	6,105	12.7	2	6,056	17.5	2	6,417	20.4	2	5,951	26.5	2	5,700	32.8
WHITFIELD:														
2	16,897	4.6	2	20,808	5.1	4	26,105	10.0	4	34,432	9.2	4	40,200	9.3
WILCOX:														
2	15,511	5.0	2	13,439	7.9	2	12,755	10.3	2	10,167	15.5	2	8,600	21.7
WILKES:														
4	24,210	6.4	2	15,944	6.6	2	15,084	8.7	2	12,388	12.7	2	10,800	17.3
WILKINSON:														
2	11,376	6.8	2	10,844	9.8	2	11,025	11.9	2	9,781	16.1	2	9,100	20.5
WORTH:														
4	23,863	6.5	4	21,094	10.1	4	21,374	12.3	2	19,357	8.2	2	18,400	10.2
CAMPBELL:														
2	11,709	6.6	2	9,903	10.7		(2)			(2)			(2)	
MILTON:														
2	6,885	11.3	2	6,730	15.8		(2)			(2)			(2)	

EXHIBIT F (Cont'd)

County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1957(3)		
GEORGIA: (Minus Fulton)														
396	2663,226	5.8	408	2589,919	8.4	404	2730,837	9.7	404	2971,006	10.7	404	3305,000	11.4
GEORGIA: (TOTAL)														
402	2895,832	-	414	2908,506	-	410	3123,723	-	410	3444,578	-	410	3866,000	

- - - - -

SOURCE:

Calculated from U. S. Census 1920, 1930, 1940, 1950;and 1957 population estimate made by the Georgia Department of Public Health.

FOOTNOTES:

(1) Counties created since 1920 Census.

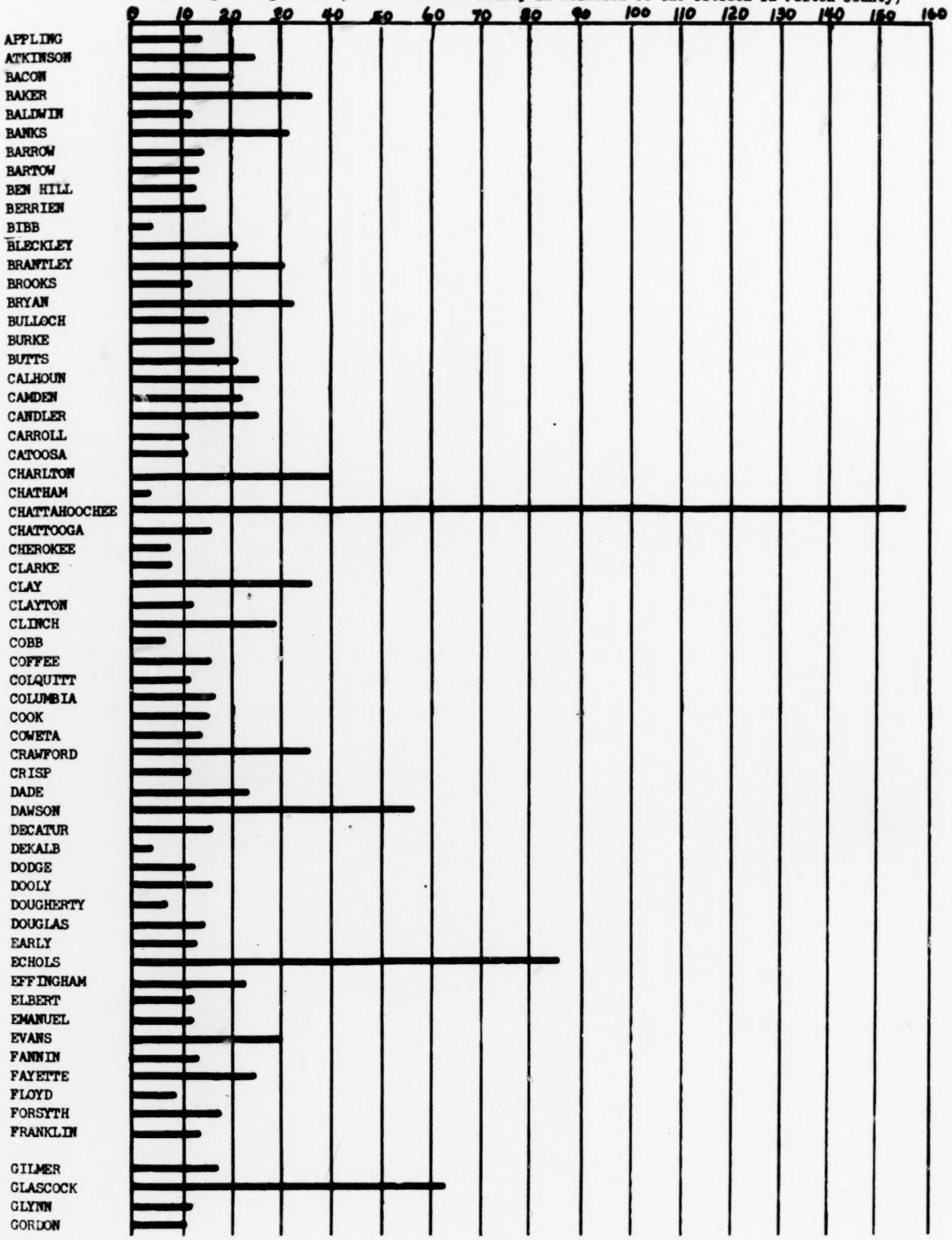
(2) Counties merged with Fulton County after 1930 Census.

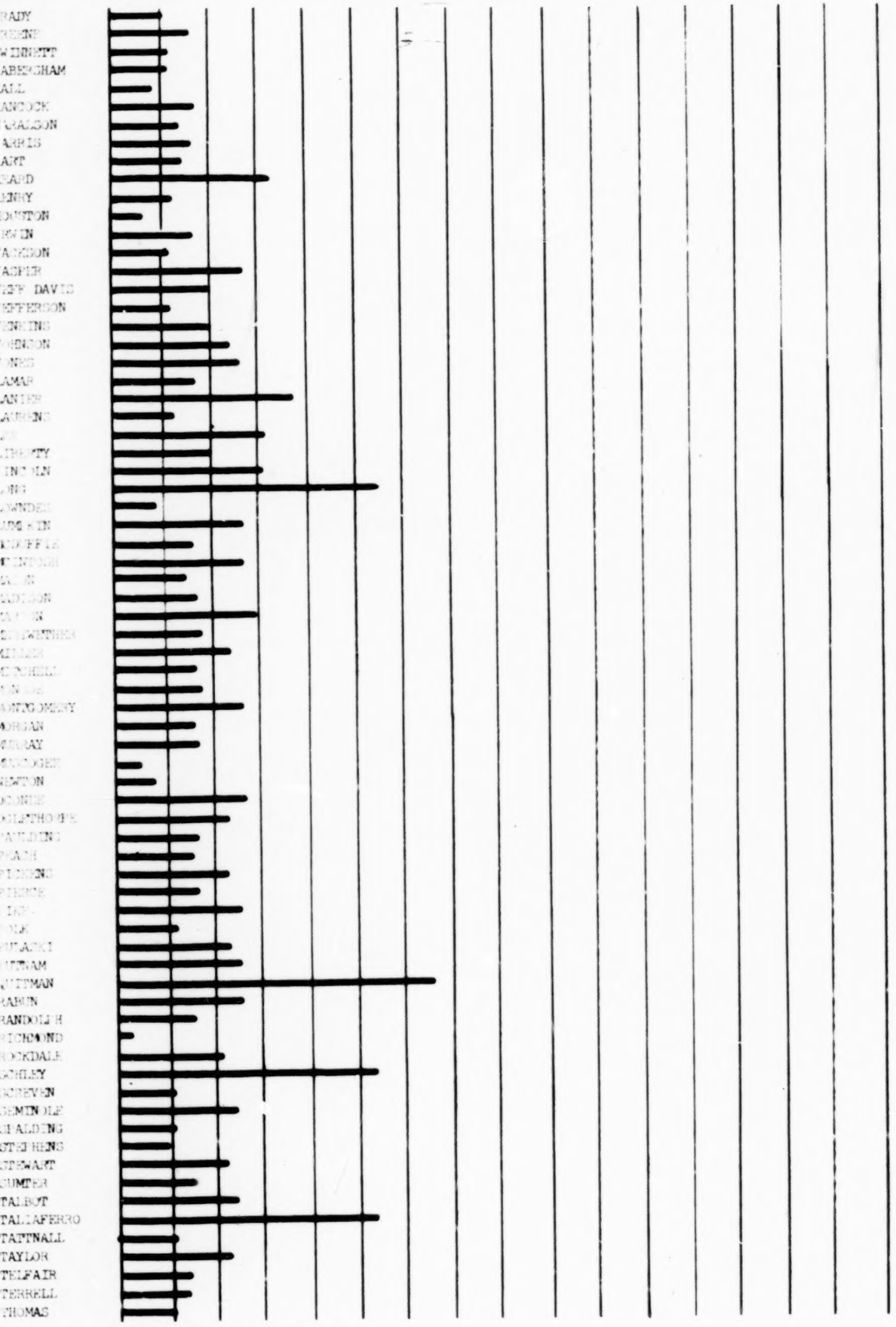
(3) Military Population is excluded from the County Totals, but included in State Total.

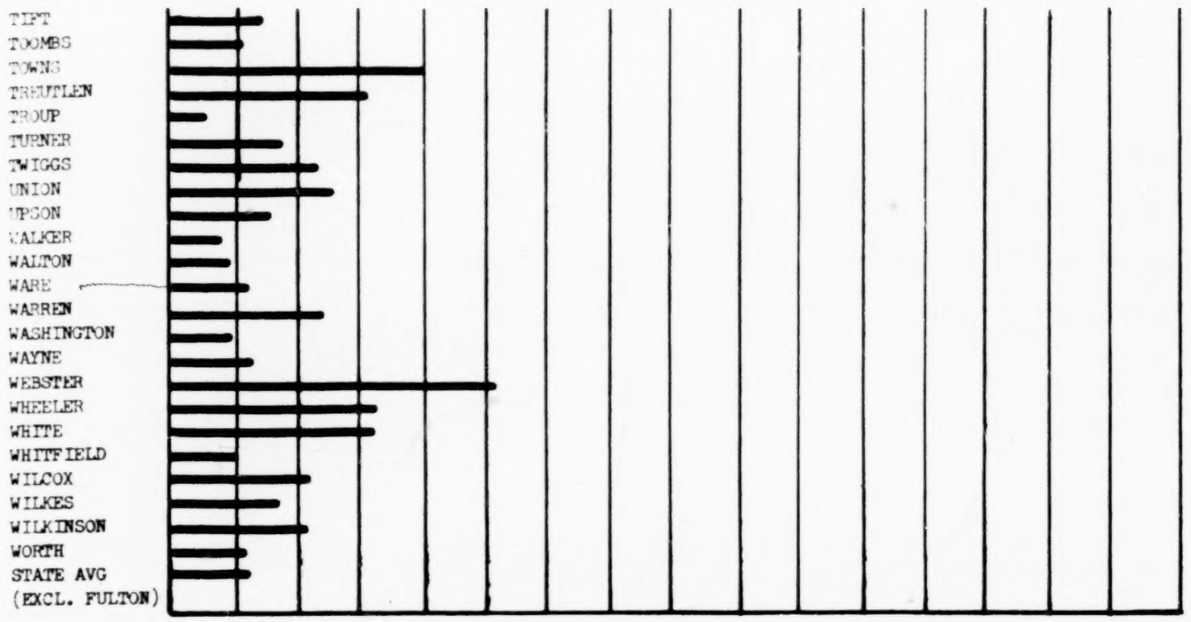
RELATIVE ELECTORAL INFLUENCE OF INDIVIDUAL CITIZENS IN EACH OF GEORGIA'S COUNTIES

EXHIBIT G

(Voting Strength Of A Citizen Of Each County In Relation To One Citizen In Fulton County)







SOURCE CALCULATED FROM 1957 POPULATION ESTIMATES MADE BY THE GEORGIA DEPARTMENT OF PUBLIC HEALTH

EXHIBIT H

County	County Unit Votes	1957 Population[1]	Disparity Factor	Total Votes Cast for Governor 1954 Dem. Primary	Disparity Factor
Appling	2	13,900	13.5	3,498	7.4
Atkinson	2	7,600	24.6	1,998	12.9
Bacon	2	9,600	19.5	2,260	11.4
Baker	2	5,200	36.0	1,130	22.8
Baldwin	4	33,300	11.2	4,166	12.4
Banks	2	5,900	31.7	2,044	12.6
Barrow	2	13,400	14.0	2,770	9.3
Bartow	4	29,100	12.9	5,346	9.6
Ben Hill	2	15,300	12.2	2,915	8.8
Berrien	2	13,300	14.1	2,373	10.9
Bibb	6	139,200	4.0	17,674	4.4
Bleckley	2	9,100	20.5	2,660	9.7
Brantley	2	6,200	30.2	1,743	14.8
Brooks	2	17,000	11.0	3,076	8.4
Bryan	2	5,900	31.7	1,520	17.0
Bulloch	4	24,300	15.4	4,946	10.4
Burke	4	21,900	17.1	2,526	20.4
Butts	2	9,100	20.5	2,474	10.4
Calhoun	2	7,500	24.9	1,527	16.9
Camden	2	8,700	21.5	1,851	13.9
Candler	2	7,500	24.9	1,874	13.8
Carroll	4	34,600	10.8	5,810	8.9
Catoosa	2	17,300	10.8	2,593	9.9
Charlton	2	4,700	39.8	1,276	20.2
Chatham	6	186,700	3.0	25,005	3.1
Chattahoochee	2	1,200	155.8	191	134.3
Chattooga	4	23,100	16.2	4,801	10.7
Cherokee	2	21,500	8.7	3,817	6.8
Clarke	4	42,200	8.9	5,585	9.2
Clay	2	5,200	36.0	762	33.8
Clayton	4	32,600	11.5	4,660	11.1
Clinch	2	6,500	28.8	1,354	19.0
Cobb	6	81,600	6.9	14,684	5.3
Coffee	4	25,800	14.5	5,419	9.5
Colquitt	4	35,200	10.6	5,993	8.6
Columbia	2	10,700	17.5	1,568	16.4
Cook	2	12,600	14.8	2,432	10.6
Coweta	4	28,600	13.1	5,515	9.3
Crawford	2	5,500	34.0	1,192	21.6
Crisp	2	18,000	10.4	3,689	7.0

EXHIBIT H (Cont'd)

County	County Unit Votes	1957 Population[1]	Disparity Factor	Total Votes Cast For Governor 1954 Dem Primary	Disparity Factor
Dade	2	8,400	22.3	1,411	18.3
Dawson	2	3,300	56.7	1,148	22.5
Decatur	4	24,900	15.0	4,363	11.8
DeKalb	6	194,500	2.9	35,211	2.2
Dodge	2	16,000	11.7	5,551	4.6
Dooly	2	12,600	14.8	2,018	12.8
Dougherty	4	57,400	6.5	7,517	6.9
Douglas	2	13,800	13.6	2,760	9.3
Early	2	16,800	11.1	2,159	11.9
Echols	2	2,200	85.0	697	36.9
Effingham	2	8,900	21.0	1,728	14.9
Elbert	2	18,200	10.3	3,988	6.5
Emanuel	2	17,700	10.6	4,106	6.3
Evans	2	6,300	29.7	2,087	12.3
Fannin	2	15,600	12.0	1,232	20.9
Fayette	2	7,900	23.7	1,924	13.4
Floyd	6	68,000	8.3	10,746	7.2
Forsyth	2	10,900	17.2	2,240	11.5
Franklin	2	13,800	13.6	3,602	7.2
Fulton	6	561,000	1.0	77,358	1.0
Gilmer	2	10,600	17.6	2,305	11.2
Glascock	2	3,000	62.3	872	29.6
Glynn	4	34,700	10.8	5,730	9.0
Gordon	2	19,400	9.6	3,485	7.4
Grady	2	18,700	10.0	3,633	7.1
Greene	2	12,400	15.1	3,129	8.2
Gwinnett	4	34,900	10.7	6,412	8.0
Habersham	2	17,900	10.4	3,612	7.1
Hall	4	44,200	8.5	8,465	6.1
Hancock	2	10,100	18.5	1,357	19.0
Haralson	2	15,000	12.5	3,346	7.7
Harris	2	11,300	16.5	2,064	12.5
Hart	2	14,000	13.4	3,457	7.5
Heard	2	6,000	31.2	1,418	18.2
Henry	2	16,600	11.3	3,751	6.9
Houston	2	27,800	6.7	3,287	7.8
Irwin	2	11,500	16.3	3,022	8.5

EXHIBIT H (Cont'd)

County	County Unit Votes	1957 (1) Population	Disparity Factor	Total Votes Cast for Governor 1954 Dem. Primary	Disparity Factor
Jackson	2	18,600	10.1	4,326	6.0
Jasper	2	6,700	27.9	1,584	16.3
Jeff Davis	2	9,700	19.3	2,694	9.6
Jefferson	2	18,400	10.2	2,537	10.2
Jenkins	2	9,400	19.9	2,502	10.3
Johnson	2	8,100	23.1	2,819	9.1
Jones	2	7,200	26.0	1,755	14.7
Lamar	2	10,500	17.8	2,451	10.5
Lanier	2	5,000	37.4	1,000	25.8
Laurens	4	33,200	11.3	8,133	6.3
Lee	2	6,100	30.7	815	31.6
Liberty	2	9,800	19.1	2,167	11.9
Lincoln	2	6,200	30.2	1,318	19.6
Long	2	3,400	55.0	1,311	19.7
Lowndes	4	42,400	8.8	5,134	10.0
Lumpkin	2	6,900	27.1	2,113	12.2
Macon	2	13,300	14.1	2,416	10.7
Madison	2	11,600	16.1	2,472	10.4
Marion	2	6,300	29.7	919	28.0
McDuffie	2	12,000	15.6	2,020	12.8
McIntosh	2	6,500	28.8	1,419	18.2
Meriwether	4	20,700	18.1	4,494	11.5
Miller	2	8,500	22.0	1,831	14.1
Mitchell	4	22,400	16.7	4,350	11.9
Monroe	2	10,500	17.8	2,424	10.6
Montgomery	2	6,900	27.1	2,228	11.6
Morgan	2	11,500	16.3	2,129	12.1
Murray	2	10,500	17.8	2,082	12.4
Muscogee	6	139,200	4.0	11,899	6.5
Newton	2	21,400	8.7	3,259	7.9
Oconee	2	6,700	27.9	1,602	16.1
Oglethorpe	2	8,500	22.0	1,764	14.6
Paulding	2	11,200	16.7	3,136	8.2
Peach	2	12,800	14.6	2,115	12.2
Pickens	2	8,800	21.3	1,972	13.1
Pierce	2	10,800	17.3	2,587	10.0

EXHIBIT H (Cont'd)

County	County Unit Votes	1957 Population (1)	Disparity Factor	Total Votes Cast for Governor 1954 Dem Primary	Disparity Factor
Pike	2	7,400	25.3	1,516	17.0
Polk	4	32,900	11.4	5,655	9.1
Pulaski	2	8,300	22.5	1,944	13.3
Putnam	2	7,400	25.3	1,696	15.2
Quitman	2	2,800	66.8	611	42.1
Rabun	2	7,300	25.6	1,995	12.9
Randolph	2	12,200	15.3	2,265	11.4
Richmond	6	153,400	3.7	15,818	4.9
Rockdale	2	9,100	20.5	2,071	12.4
Schley	2	3,500	53.4	831	31.0
Screven	2	16,700	11.2	2,098	12.3
Seminole	2	7,600	24.6	1,856	13.9
Spalding	4	33,100	11.3	7,022	7.3
Stephens	2	19,200	9.7	3,695	7.0
Stewart	2	8,400	22.3	1,667	15.5
Sumter	4	24,300	15.4	4,062	12.7
Talbot	2	7,500	24.9	955	27.0
Taliaferro	2	3,500	53.4	1,140	22.6
Tattnall	2	15,900	11.8	4,723	5.5
Taylor	2	8,200	22.8	2,186	11.8
Telfair	2	12,200	15.3	3,559	7.2
Terrell	2	13,000	14.4	1,976	13.0
Thomas	4	36,100	10.4	6,746	7.6
Tift	4	25,600	14.6	4,653	11.1
Toombs	2	17,900	10.4	3,782	6.8
Towns	2	4,800	39.0	1,284	20.1
Treutlen	2	5,900	31.7	1,762	14.6
Troup	4	54,200	6.9	7,441	6.9
Turner	2	10,400	18.0	2,175	11.9
Twiggs	2	7,900	23.7	1,548	16.7
Union	2	7,200	26.0	1,744	14.8
Upson	4	25,000	15.0	4,964	10.4
Walker	4	43.300	8.6	5,079	10.2
Walton	2	20,200	9.3	3,854	6.7
Ware	4	32,300	11.6	5,901	8.7

NUMBER OF POPULAR VOTES REPRESENTED BY ONE COUNTY UNIT VOTE IN DEMOCRATIC PRIMARY ELECTION FOR GOVERNOR IN GEORGIA, 1954

EXHIBIT I

(Thousands Of Votes)

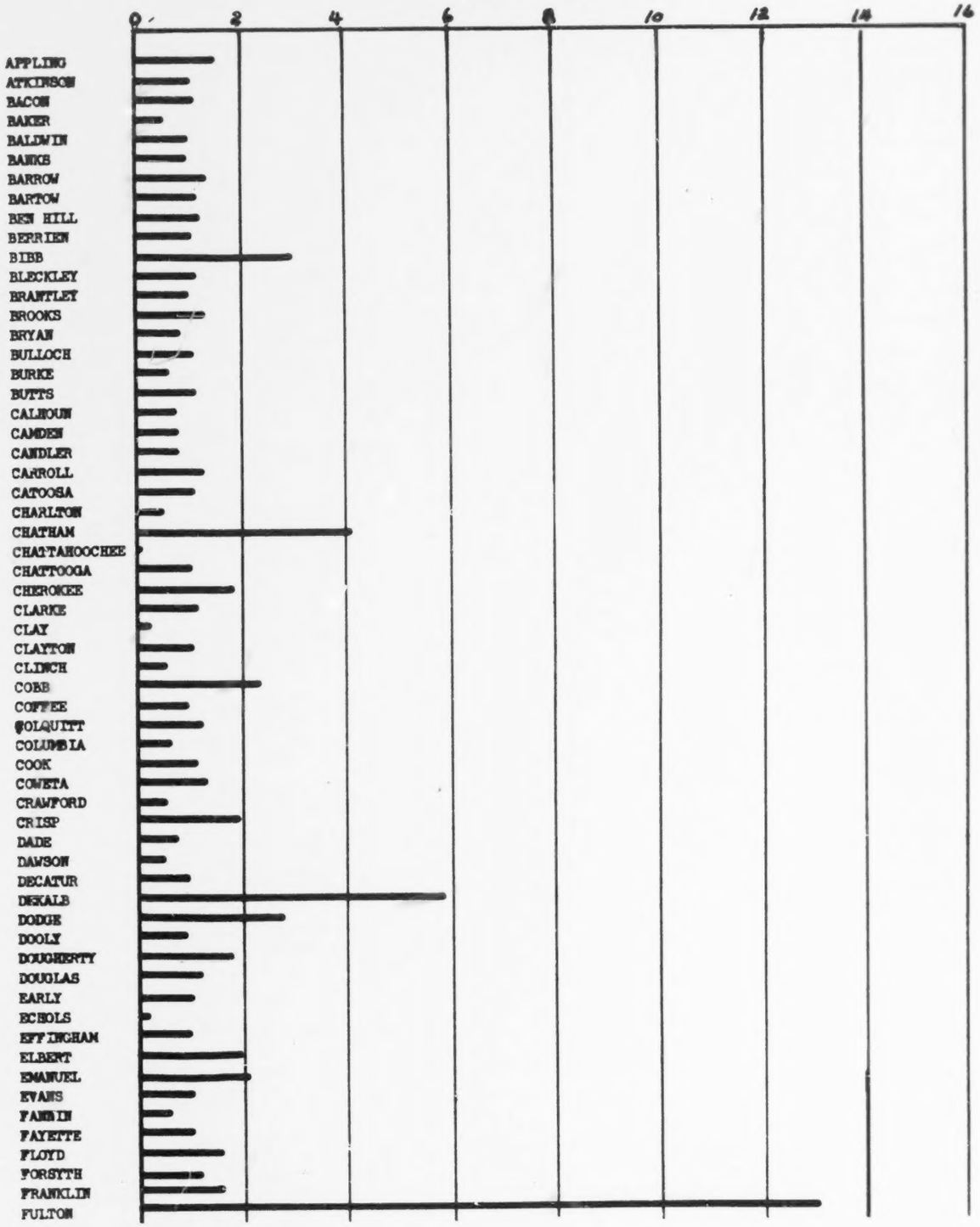


EXHIBIT I (Cont'd)

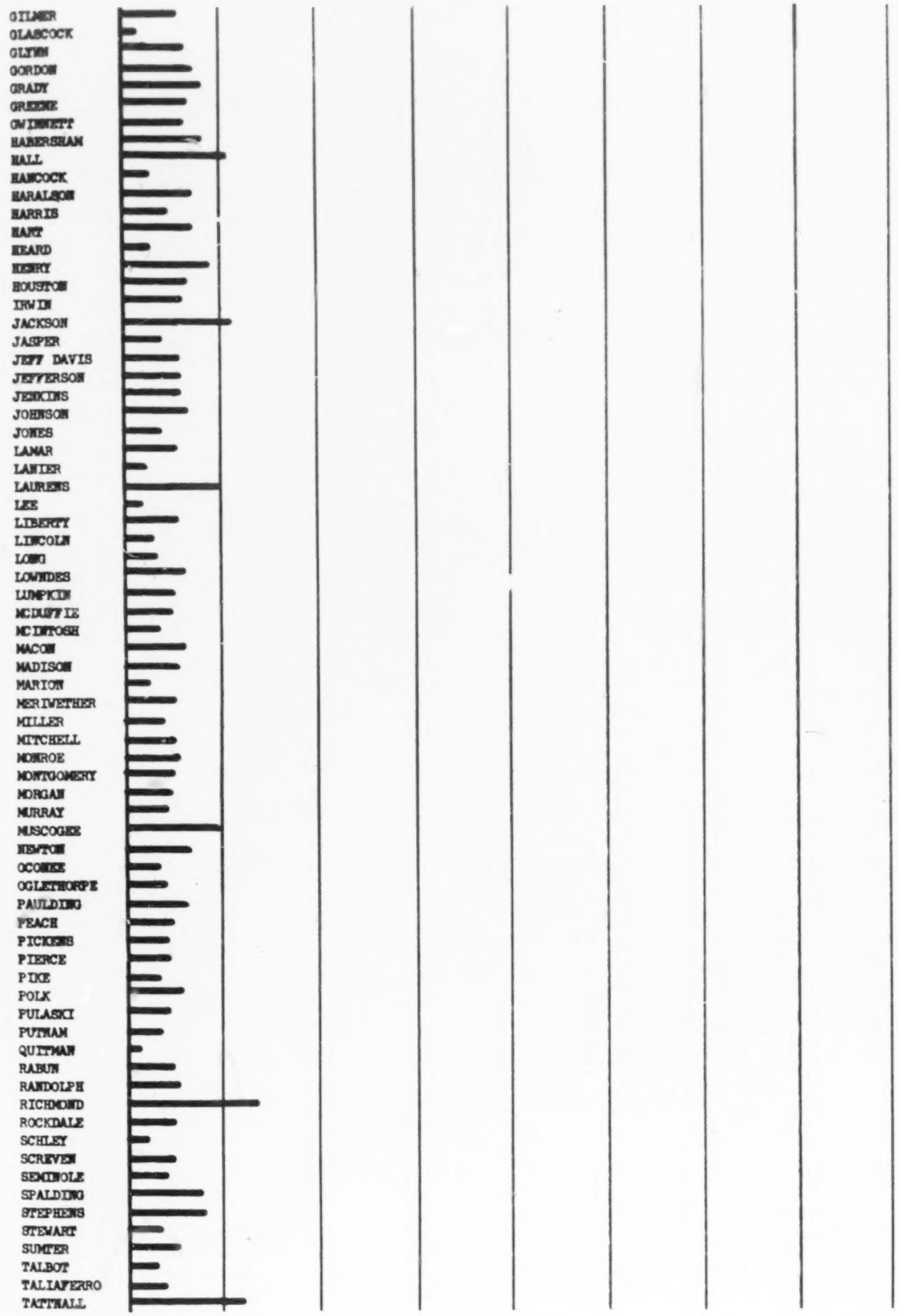
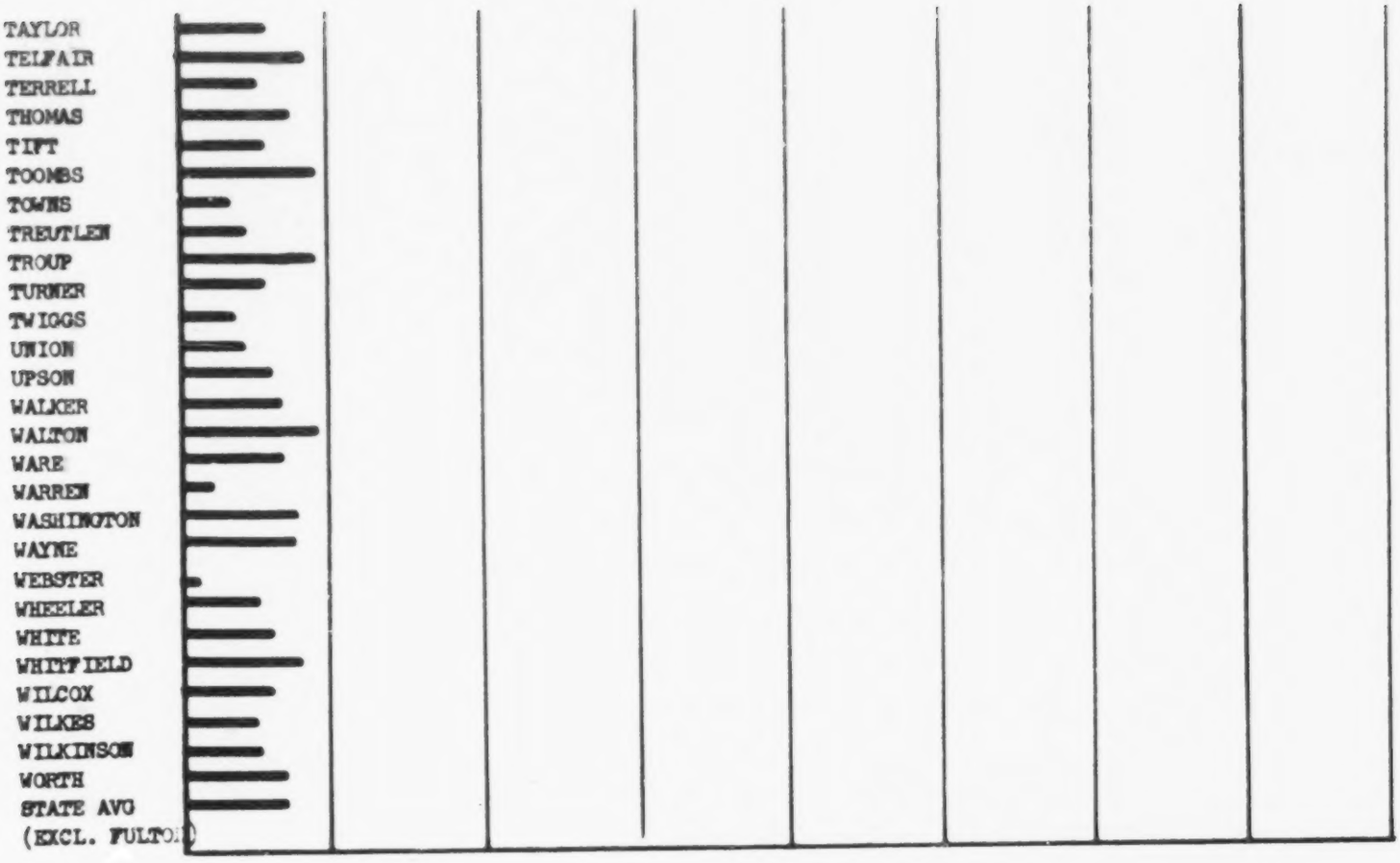


EXHIBIT I (Cont'd)



PROOF OF SERVICE

I, Morris B. Abram, one of the attorneys for William B. Hartsfield, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the ..... day of April, 1958, I served copies of the foregoing Motion and Petition to the Supreme Court of the United States on the several parties thereto, as follows:

1. On the Honorable Boyd Sloan, Judge of the United States District Court for the Northern District of Georgia, Atlanta Division, by mailing a copy in a duly addressed envelope, with first class postage prepaid to his Chambers, Third Floor, United States Post Office Building, Atlanta, Georgia.

2. On John Sammons Bell and George D. Stewart, as Chairman and Secretary, respectively, of the State Democratic Committee of Georgia, on the State Democratic Executive Committee of Georgia, on the Georgia Democratic Party, and on Hon. Ben W. Fortson, Jr., Secretary of State of Georgia, by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record, as follows:

To Charles J. Bloch, Esq., First National Bank Building, Macon, Georgia, Attorney for all defendants except Ben W. Fortson, Jr.

To Hon. Eugene Cook, The Attorney General, Judicial Building, Capitol Square, Atlanta, Georgia, and B. D. Murphy, Esq., Citizens & Southern National Bank Building, Atlanta, Georgia, Attorneys for Ben W. Fortson, Jr., Secretary of State of Georgia.

.....

Attorney for William B. Hartsfield
1504 Healey Building
Atlanta, Georgia

MOTION FILED APR 24 1958 LIBRARY
SUPREME COURT

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

NO. 683, Misc.

WILLIAM B. HARTSFIELD, *Petitioner*

v.

HONORABLE BOYD SLOAN,
United States District Judge for the
Northern District of Georgia, *Respondent*

MOTION TO ADVANCE

MORRIS B. ABRAM
1504 Healey Building
Atlanta 3, Georgia

CHARLES L. WELTNER
1405 Fulton National Bank Building
Atlanta 3, Georgia

OSGOOD O. WILLIAMS
1018 Healey Building
Atlanta 3, Georgia

MAURICE N. MALOOF
1504 Healey Building
Atlanta 3, Georgia

Counsel for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

NO. 683, Misc.

WILLIAM B. HARTSFIELD, *Petitioner*

v.

HONORABLE BOYD SLOAN,
United States District Judge for the
Northern District of Georgia, *Respondent*

ON MOTION FOR LEAVE TO FILE PETITION FOR A WRIT OF MANDAMUS, AND PETITION FOR A WRIT OF MANDAMUS

MOTION TO ADVANCE

TO THE HONORABLE EARL WARREN, CHIEF JUSTICE, AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

COMES NOW the petitioner and moves the Court to advance consideration of the Motion for Leave to file Petition for a Writ of Mandamus and Petition for a Writ of Mandamus to such early date as may be convenient to the Court during the present term.

In support of this Motion, petitioner shows that unless this case is advanced for consideration, mere lapse of time may defeat the cause before it can be reached in the normal course of business of this Court, moreover, the time prob-

lem in this case is inherent and does not result from any lack of diligence or fault of petitioner.

The case in this Court seeks to require the Respondent to convene a court of three Federal judges pursuant to application therefor presented by petitioner on the 15th of March, 1958. Petitioner's complaint below, for injunctive and declaratory relief, is a voting franchise case challenging the constitutionality of a Georgia statute. Under this statute certain of the defendants would sometime prior to the General Election to be held November 4, 1958 devalue petitioner's vote cast in the Georgia Democratic Primary Election of 1958.

There is no statute requiring the party defendants to hold a primary. (But, since the enactment of the statute attacked in 1917, and probably long before, the defendant party has never failed to hold a primary for statewide offices.) The law of Georgia under attack requires that the party defendant tabulate results obtained from the count of the popular vote cast in the Primary in such a manner as to drastically reduce the value of the petitioner's ballot. Petitioner seeks, *inter alia,* to prevent the party defendants from taking this contrived additional step and certifying the result so obtained to the defendant Secretary of State of Georgia who certifies the candidates for the general election ballot.

Defendants Bell and Stewart made a public announcement on March 8, 1958 that a primary would be held by the party defendants on a date to be later determined by said party defendants. Seven days later petitioner filed his complaint, which included a mass of compiled statistical data annexed. Had petitioner filed his complaint before the primary was announced, defendants below could have urged, as they have, that the complaint is premature (See Appendix F of Petition for Writ of Mandamus)—but with better grounds. On the other hand, by the time this Court reconvenes in October the general election will be imminent and the moot-

ness problem of *Turman v. Duckworth*, 329 U.S. 675 will then confront petitioner.

To prevent the drastic devaluation of his ballot, this petitioner must obtain an injunction prior to the preparation of the ballot to be used in the general election. The party defendants furthermore have the power to arrange the primary date as they see fit. (In this connection the petitioner shows that on April 21, 1958, and subsequent to the filing of this case in this Supreme Court, defendant Bell announced that he had appointed a sub-committee of the defendant Georgia State Democratic Executive Committee to meet on May 23, 1958 to prepare suggested rules and regulations for any Primary of the defendant party in 1958). This petitioner, or any petitioner seeking to protect his constitutional right to an undiluted ballot in the only meaningful statewide election in Georgia, is forever squeezed between prematurity and mootness. If the petitioner brings his suit before the party defendants make any announcement, it is subject to the possibility of dismissal as premature. If the voter waits a little longer he runs the risk of being dismissed for mootness. This Court has the power to protect the petitioner's right to vote by recognizing the dilemma, advancing the cause and thus preventing the lapse of time from defeating the substantive rights asserted in the complaint below.

The failure to convene the panel court was an unforeseen time complication in the case below. The complaint squarely attacked the constitutionality of a state law; an injunction was sought, a State officer was a party defendant; the merits of the issue raised had never been decided in this Court; and the new jurisdiction conferred on the District Court by the 1957 Civil Rights Act was specifically relied upon.

Despite the delay occasioned by this petition for mandamus the petitioner can still obtain effective relief if this Court grants the writ by the end of this term. The Georgia

General Election ballots need not be finally prepared until the last days of October. In the meanwhile, in July, August and September petitioner may pursue his rights before a panel court. Even if relief should be denied below on the merits, this Court can preserve its appellate jurisdiction by a timely review in October, 1958.

Inasmuch as the mere lapse of time before this case can be reached in the normal course of this Court's business may defeat the cause, and inasmuch as the time problem is due to the inherent nature of the case, continually teetering between prematurity and mootness, and inasmuch as the time problem was not caused or created by any fault or lack of diligence of petitioner, the Motion to Advance should be granted.

WHEREFORE, petitioner respectfully prays that this Court advance consideration of petitioner's Motion and Petition to such convenient date as will enable the same to be disposed of prior to the expiration of this Term of Court.

Morris B. Abram
Charles L. Weltner
Osgood O. Williams
Maurice N. Maloof

Counsel for Petitioner

PROOF OF SERVICE

I, Morris B. Abram, one of the attorneys for William B. Hartsfield, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the ..... day of April, 1958, I served copies of the foregoing Motion to the Supreme Court of the United States on the several parties thereto, as follows:

1. On the Honorable Boyd Sloan, Judge of the United States District Court for the Northern District of Georgia, Atlanta Division, by mailing a copy in a duly addressed envelope, with first class postage prepaid to his Chambers, Third Floor, United States Post Office Building, Atlanta, Georgia.

2. On John Sammons Bell and George D. Stewart, as Chairman and Secretary, respectively, of the State Democratic Committee of Georgia, on the State Democratic Executive Committee of Georgia, on the Georgia Democratic Party, and on Hon. Ben W. Fortson, Jr., Secretary of State of Georgia, by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record, as follows:

To Charles J. Bloch, Esq., First National Bank Building, Macon, Georgia, Attorney for all defendants except Ben W. Fortson, Jr.

To Hon. Eugene Cook, The Attorney General, Judicial Building, Capitol Square, Atlanta, Georgia, and B. D. Murphy, Esq., Citizens & Southern National Bank Building, Atlanta, Georgia, Attorneys for Ben W. Fortson, Jr., Secretary of State of Georgia.

.....

Attorney for William B. Hartsfield
1504 Healey Building
Atlanta, Georgia

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

NO. 683, Misc.

WILLIAM B. HARTSFIELD, *Petitioner*

v.

HONORABLE BOYD SLOAN,
United States District Judge for the
Northern District of Georgia, *Respondent*

ON MOTION FOR LEAVE TO FILE PETITION FOR A WRIT OF MANDAMUS, AND PETITION FOR A WRIT OF MANDAMUS

REPLY BRIEF OF PETITIONER

MORRIS B. ABRAM
1504 Healey Building
Atlanta 3, Georgia

CHARLES L. WELTNER
1405 Fulton National Bank Building
Atlanta 3, Georgia

OSGOOD O. WILLIAMS
1018 Healey Building
Atlanta 3, Georgia

MAURICE N. MALOOF
1504 Healey Building
Atlanta 3, Georgia
Counsel for Petitioner

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TO THE HONORABLE EARL WARREN, CHIEF JUSTICE, AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

COMES NOW the petitioner and files this his Reply Brief to the briefs of Respondents in opposition to his Motion and Petition heretofore filed.

I.

The response filed does not raise new or unanticipated questions. The status of the case below is unchanged since the order of the District Judge, the Honorable Boyd Sloan, refusing to set in motion the procedures to convene a panel court. The petition remains undismissed.

If the petitioner's prayers for mandamus are granted, he will obtain a forum in which to try his case. If the writ is denied, there will have been decided, without opportunity for a hearing in the only available forum, matters of far reaching significance in such widely different and important areas as the constitutional protection of the elective franchise, the interpretation of the Civil Rights Act of 1957 and the rule of *Ex Parte Poresky*, 290 U. S. 30.

The sole question presented in this case at the time is whether the Honorable Boyd Sloan was required by law to convene the three-judge District Court.

Title 28 USC 2281, together with Section 2284, by its language, makes the convening of the panel court mandatory whenever a complaint seeks to enjoin a state officer from enforcing a state statute on the grounds of the statute's unconstitutionality. The single judge's opinion of the merits of the complaint is immaterial. *Ex Parte Poresky*, supra. His sole duty is to examine the complaint to see if it seeks injunctive relief against the operation of a state statute on the grounds of its unconstitutionality. If it does, the statute gives the single judge no discretion; he must convene the panel court. Petitioner's complaint below was just such a bill. The only court which was authorized by law to hear the case, develop the evidence therein and to decide the merits thereof was barred to the petitioner by the respondent contrary to law.

Prior to the enactment of sub-section (5) of Title 28 USC Section 2284, there was authoritative case law exception to this statutory mandate (*Ex Parte Poresky*, supra), upon which the respondent relied in refusing to convene the panel court. Under the rule of the *Poresky* case, the panel court does not have to be convened if the *very issue* raised in the complaint has been so clearly decided by previous decisions of this Court so as to be absolutely foreclosed to controversy. This is not the case with respect to the issues raised in this petitioner's complaint below, as is clearly shown in the petition for the writ of mandamus herein.

None of the previous county unit cases were decided by

this Court on their merits. None of them upheld the constitutionality of the statute now under attack below.

In no previous county unit case or voting case has this Court held that the judiciary lacked jurisdiction to deal with this subject matter. On the contrary, *Terry v. Adams,* 345 U. S. 461; *Nixon v. Herndon,* 273 U. S. 536; and *Smith v. Allwright,* 321 U. S. 649, conclusively establish that the judiciary has and exercises such jurisdiction. The discretionary refusal to invoke equity in some previous voting cases, including the county unit case of *South v. Peters,* 339 U. S. 276, could not justify the respondent's refusal to convene the panel court for the following reasons: first, this traditional reluctance to invoke equity jurisdiction to enforce voting rights has been superseded by the will of Congress now expressed in Title 28 USC 1343 (4) enacted in September, 1957 and, second, because the determination whether a court will, in its discretion, refuse equity aid in a particular case must be made by that court itself. The respondent would not be authorized to make that determination in a case in which the discretion by law rests with a three-judge court.

Cases involving unequal *legislative* representation (*Colegrove v. Green,* 328 U. S. 549; *Remmey v. Smith,* 102 F. Supp. 708) are not in point here and cannot justify the respondent's ruling. First, the denial of relief in the *Colegrove* case can be interpreted as being no broader than a refusal to exercise equitable discretion — the decisive vote of the seven Justices participating having based the decision on that ground. Second, the *Colegrove* type case does not involve the deprivation of an individual's right to vote. In this representation type case, each individual voting for the office in question has his vote counted exactly at the same value as every other vote cast for that office. The question in this case below is completely different. It is a question purely and simply of voter disfranchisement. Petitioner below complains that he, voting for the same office, has his vote arbitrarily counted at widely varying values as compared with the votes cast by other voters in the same election. This type of discrimination is forbidden by the Constitution. See *Terry v. Adams,* supra, *United States v. Classic,* 313 U. S. 299, and *United States v. Saylor.* 320 U. S. 385.

II.

The statute under constitutional attack below gives to every qualified voter in every one of the 158 of Georgia's 159 counties many times the ballot strength of the petitioner. On a state average, *each* voter voting for the *same* office in the *same* election as the petitioner has 11.4 times his franchise. The Constitution of the State of Georgia, by its relevant provisions (Exhibit A of the complaint — page 49 Petition for Mandamus), establishes the qualifications of the petitioner and other qualified voters to vote. Presumably by its terms, the petitioner and other qualified voters have one vote each — his own. By the application of the county unit step, a vote cast in 158 counties of Georgia, presumably a single vote when cast, is in some cases made into 155, in others to 85, in others to 36, etc., depending solely on where the voter resides. Petitioner's vote, and that of those similarly situated, is frozen and, if population trends continue as they have consistently, the already gross dilution of his ballot will grow more serious each year and until and unless a court adjudicate his case.

Exact mathematical proportion may not be required by the Constitution in legislative district apportionment — for indeed it is impossible there. However, when a qualified voter votes for a single office holder, mathematical equality is not only possible but is required. We know of no exception to the rule that in voting one man shall cast one ballot which shall be counted at the same value as that cast by any other man. Under the county unit statute, voters in the adjoining counties of the petitioner's residence in the metropolitan complex of Greater Atlanta enjoy, for example, the following franchise advantage over the petitioner; in DeKalb, 2.9; in Cobb, 6.9; in Clayton, 11.3; in Gwinnett, 10.7; in Cherokee, 8.7 and in Forsyth, 17.2.

In rural south Georgia, voters in Echols County (having 85 times the franchise of the petitioner) have a tenfold advantage over their adjoining neighbors in Lowndes County. This disparity pattern is not confined to discrimination against urban voters and in favor of rural voters, but occurs between urban voters and between rural voters. In fact, the disparity pattern is statewide, wholly without justification and cannot possibly be said to reflect any plan, to say nothing of allowable policy.

Certainly the burden of justifying this discrimination should be placed on the defendants in a trial of the complaint.

The statute attacked below is as clearly unconstitutional as one which arbitrarily deprives a citizen of the right to register, or to vote or to have his vote counted. This Court in a franchise case said long ago that the Constitution "nullifies sophisticated as well as simple minded modes of discrimination." (*Lane v. Wilson* 207 U. S. 268, 275.) Further, this Court has recognized that the right to have one's vote counted without dilution (as in stuffing ballot boxes) is as equally protected as the right to register and to vote. (*United States v. Saylor*, 322 U. S. 385.)

The late Chief Justice Arthur T. Vanderbilt focused on the Fourteenth Amendment issue in the county unit system when, writing four years before the Civil Rights Act of 1957, he commented on the refusal of this Court to grant relief, saying "Out of judicial deference to the action of two state legislatures, the equal protection clause faded out of the Constitution and with it fundamental rights of citizens of Georgia and Illinois." (See Arthur T. Vanderbilt, *The Doctrine of the Separation of Powers and Its Present-Day Significance* (Lincoln: University of Nebraska Press, 1953, page 138.)

Whatever may be the jurisdictional and other problems in the representation type case in Illinois as in *Colegrove v. Green* (328 U. S. 549), the flagrant denial of equal protection to the Georgia ballot can and should be submitted to the test of a trial.

III.

Though petitioner invoked and relied on new subsection 4, Title 28 USC 1343 — the Civil Rights Act of 1957 — the court below made no effort to assess the significance to this case of the addition to the jurisdiction of the District Court. No mention was made of this Act in the decision refusing to convene the panel court.

The Civil Rights Act of 1957 was major legislation of the Eighty-fifth Congress. The terms of this legislation were debated for months in the public and congressional domain. Many objections to the Act as proposed were hotly contested and

were rejected. The debates in Congress and outside demonstrated an almost unanimity of conviction that the right to vote should enjoy full federal protection.

To secure the "elective franchise" the Congress established a new division within the Department of Justice; empowered the Attorney General to seek equitable protection of voting rights; created a Commission to study civil rights, including the right to vote, and conferred a new specific grant of jurisdiction on the District Courts.

The Civil Rights Act of 1957 reflects the temper of Congress and the country. Whether the District Court could refuse to exercise its equitable powers to decide the case below before the enactment of sub-section 4, Title 28 USC, 1343, is now beside the point. The explicit statutory jurisdiction exists to decide the case. If there is any question as to the meaning of this provision, the temper of Congress expressed in the Civil Rights Act as a whole should be considered and respected in the interpretation of the provision.

From the public statements of the Executive Branch we are led to believe that it represents this temper of Congress and if there be any doubt, we respectfully ask this Court to invite the Attorney General to express his views.

IV.

Respondents rely upon two theories to sustain their position that petitioner's motion and petition for writ of mandamus should be denied. First, they contend that mandamus from this Court is not the proper remedy and, second, the judge below correctly refused to take the steps to assemble the panel court.

A.

Mandamus from this Court is the proper remedy and this Court has so held repeatedly. The briefs filed in behalf of the respondent cite no cases from this Court to the contrary. In the one they cited, *Ex Parte Cogdell,* 342 U.S. 163 (1951) decided long after the enactment of Title 28 USC 2284 (1) (which said briefs maintain changed matters) this Court *granted* the motion for leave to file the writ of mandamus. In every circuit

court case cited and relied on by respondent, *the petition had been dismissed* and a *final* order entered.

Even so there is grave doubt as to the correctness of such rulings from these circuits in view of the authoritative decisions of this Court holding such decisions are not appealable where as here there has been no final order entered — mandamus from this Court is the sole and appropriate remedy. Briefs for the respondent cite no authority holding otherwise.

The cited case of *Wicks v. Southern Pacific Company,* 231 F. 2d 130 is no authority: In that case the petition had been dismissed; the petitioner had filed an appeal and *thereafter* claimed he should have sought mandamus; and there was no constitutional question even presented as the Railway Labor Act sought to be challenged did not legalize the union shop complained of but merely repealed *pro tanto* previous provisions prohibiting union security agreements. The cited case of *Jacobs v. Tawes,* 250 F. 2d 611 did not involve mandamus. The petition in that case had been *dismissed* and it was obvious on the face of the complaint that jurisdiction was lacking as the case was based on the jurisdictional amount and only $1904.62 was involved. The complaints in the *Wicks* and *Jacobs* cases on the face of the petitions showed that they were not appropriate for a panel court. The exact contrary is true of the case below.

In *Moore's Federal Practice* 2d Edition Vol. 6 (1953) the author states that the writ is both " 'necessary' and 'appropriate' " where ". . . the judicial action or inaction is presently non-reviewable by the normal processes of appeal . . ." as in instances such as ". . . to require a district judge to convene a three-judge court in a case for such a special court . . ." (*Moore;* supra, p. 66 and p. 67).

This rule is supported not only by numerous cases in this Court previously cited in the petition for mandamus but by sound logic — even cases where the petition has been dismissed. Mr. Chief Justice Hughes stated in *Stratton v. St. Louis South Western Ry. Co.* 282 U.S. 10, 15 and 16;

> "If a single judge, thus acting without jurisdiction, undertakes to enter an order granting an interlocutory injunction

or final decree, either *dismissing* the bill on the merits or granting a permanent injunction, no appeal lies from such an order or decree to this Court, as the statute plainly contemplates such a direct appeal only in the case of an order or decree by a court composed of three judges in accordance with the statutory requirement. *Nor does an appeal lie to the Circuit Court of Appeals* from an order or decree thus entered by a District Judge without authority, for to sustain a review on such an appeal would defeat the purpose of the statute by substituting a decree by a single judge and an appeal to the Circuit Court of Appeals for a decree by three judges and a direct appeal to this court." (emphasis added)

The order below was clearly non-reviewable by appeal. It is equally as clear that mandamus lay only from this Court:

"Since under Section 1651 (the all writs statute) a writ is to issue in aid of the court's jurisdiction; if exclusive appellate jurisdiction over a case is vested in the Supreme Court this Court and not the Court of Appeals has jurisdiction to issue writs in that case." (*Moore, supra, page 85.*)

Nor is the power to issue the writ limited to cases where the appellate jurisdiction has already attached. The writ is usable in aid of the prospective jurisdiction which Congress has bestowed. See *McClellan v. Carland* 217 U.S. 268.

Nor is the use of the "all writ statute" in a clear case — and the failure to convene a three-judge court has been consistently held to be such — circumscribed by the artificial considerations cited in the responses. Mr. Chief Justice Stone speaking for the Court in *Ex Parte Peru*, 318 U.S. 578 stated:

"The writs thus afford an expeditious and effective means of confining the inferior court to a lawful exercise of its prescribed jurisdiction, or of compelling it to *exercise its authority when it is its duty to do.* Such has been the office of writs when directed by this Court to district courts, before the Judiciary Act of 1925 and since." (emphasis added)

Mandamus, in such an instance as here, is, as Moore (supra pages 72 and 73) suggests, not an "extraordinary remedy" but "supplementary." As that author suggests, the judge "is really a 'formal' party." The judge, of course, has ". . . no more interest in upholding the questioned order than (he) has in upholding one of (his) appealable orders: the interest is profes-

sional, not legal." Further, the real parties of interest here have intervened in this Court in vigorous support of the questioned order, which is no more than proper. All of the circumstances necessary to insure a full consideration of the issue posed in this Court have come to pass.

Respondents contend that, while mandamus issuing from this Court was the appropriate remedy before the amendment codified in Title 28 Section 2284 (referred to on page 3 of the party respondents brief), this is no longer true as a result of said enactment. The only effect which this amendment could have had is that, arguably, it removed from a single judge any power to refuse to convene a three-judge court or dismiss the petition, thus overruling the rule of *Poresky* case, supra.

Respectable authority (*Berueffy, The Three-Judge Federal Court*, 15 Rocky Mt. Law Review 64; *Gowen, Comment* 28 Minn. Law Rev. 131), and the legislative history of the amendment (H. R. Report No. 1677, 77th Congress 2d Session), support this view of the amendment. Contrary, of course, is *Jacobs v. Tawes*, supra. If the amendment has any effect upon this Court's jurisdiction to grant mandamus, it only served to strengthen it. The amendment, if anything, made absolute the legal requirement for the single judge to take the steps necessary to assemble the panel court. When a judge refuses to do that which he is required by law to do, mandamus, of course, is still the appropriate remedy and there is nothing in the amendment, logic or authority to the contrary — and none has been cited on behalf of the respondent.

Briefs for respondent cite authority and the rules of this Court to the effect that mandamus is an extraordinary remedy, the issuance of which is not a matter of right but of sound discretion which is sparingly exercised. Fortunately, this offers no problem in the case at bar. This Court has, without exception, held that when a single judge refuses to convene a three-judge court, mandamus issued from this Court is the appropriate remedy. *Ex Parte Metropolitan Water Co.* 220 U.S. 539; *Ex Parte J. D. Collins* 277 U.S. 565; *Ex Parte Williams* 277 U.S. 267; *Ex Parte Public National Bank,* 278 U.S. 101; *Ex Parte Northern R.R. Co.* 280 U.S.142; *Ex Parte Hobbs* 280 U.S. 168;

Stratton v. St. Louis Southwestern R. Co. 282 U.S. 10; *Ex Parte James* 287 U.S. 573; *Ex Parte Poresky,* 290 U.S. 31; *Ex Parte Bransford,* 310 U.S. 354. This is one field at least where the appropriateness of mandamus has been settled by this Court.

B.

The briefs filed in support of respondents conclusively demonstrate why a panel court must be summoned. The questions raised are so clearly debatable that they can only be decided in the forum Congress provided for the development of evidence and argument on such issues.

The Democratic Party defendants claim, for example, that the constitutional protection of the right to vote in a state election is protected only by the 15th and 19th amendments and not by the 14th (party defendants' brief, pages 12 and 13). Such a far reaching assertion could, of course, only be heard and resolved after a hearing before a panel court. Furthermore, it would have to be resolved against the respondents for this assertion is fundamentally in contradiction of Mr. Justice Holmes holding of a unanimous court in *Nixon v. Herndon* 273 U.S. 536, 540, 541: "We find it unnecessary to consider the 15th Amendment, because it seems to us hard to imagine a more direct and obvious infringement of the 14th." In addition, beginning with the *Granger* cases, 94 U.S. 155, it has been consistently held that the 14th Amendment protects against discrimination other than on the basis of race.

These party defendants further assert that the district judge below "was eminently correct when he paid no heed to the argument that the Civil Rights Act of 1957" had any bearing on this case. The reasoning these defendants develop is that the 1957 Act "does not enlarge the jurisdiction of the federal courts so as to permit actions to recover damages or to secure equitable or other relief for the protection of the right to vote in a party primary to nomiate candidates for state offices" (page 10 of brief of party defendants). This manifestly is a matter which could not be decided by the judge below. Since there are no prior decisions of this Court interpreting this Act, the very fact that petitioner invoked this new Act in his complaint and contended that it had a material effect on any ad-

verse authority in this field was sufficient of itself to require the judge to initiate the steps to convene the panel court. At the outset of the judicial history of this Act, could it conceivably by proper, without a full development of the case, to say that the jurisdiction conferred by the Act has no application to a voter in a primary for the Governor, Lieutenant Governor and the highest judicial offices of a state in which the primary is the equivalent of election and fully controlled by state law?

Terry v. Adams, 345 U.S. 461, held that a pre-primary primary, unregulated by state law, *and for county and precinct offices,* was constitutionally protected. This decision post dates all previous county unit cases and it disposes of the challenge by these defendants below to the very vitals of the Civil Rights Act of 1957. In the *Terry* case, the suit, *inter alia,* was based on Title 8, USC, Section 43, the language of which was precisely that on which the case below was based, namely, Title 42 USC, 1983. Thus the following is true:

The new Civil Rights Act, Title 28 USC, 1343 (4) confers equity jurisdiction on the district court in cases ". . . under any act of Congress providing for the protection of civil rights, including the right to vote."

Title 42 USC 1983 (Title 8 USC 43) is such an Act of Congress and one which has many times been held by this Court as protecting the right to vote in general elections, in primaries and now in pre-primary primaries and for even county and precinct offices because these are "rights . . . secured by the Constitution and laws . . ." specifically mentioned in said Titles and sections.

Manifestly then it was error for the district judge to pay no heed to this Civil Rights Act of 1957. It was likewise error to rely on *Cox v. Peters* 208 Ga. 498; 342 U.S. 936 as the defendants now do on the grounds that the Georgia primaries were divested from the control of the Constitution of Georgia ". . . so as to make (them) without the ruling in *Smith v. Allwright* 321 U.S. 649" (page 16 of the brief filed by the party defendants). *Terry v. Adams,* supra, post dates *Cox v. Peters,* supra, and disposes thereof.

Not a single case cited on behalf of the respondents post dates the amendment to the Civil Rights Act of 1957.

Appendix A traces the history and development of the Federal right of suffrage and the traditional discretionary denial of equitable relief to protect the right to vote.

Respectfully submitted,

MORRIS B. ABRAM

CHARLES L. WELTNER

OSGOOD O. WILLIAMS

MAURICE N. MALOOF

Counsel for Petitioner

APPENDIX A

HISTORY AND DEVELOPMENT — FEDERAL RIGHT OF SUFFRAGE AND TRADITIONAL DISCRETIONARY DENIAL OF EQUITABLE RELIEF TO PROTECT THE RIGHT TO VOTE

As recently as 1874 the Supreme Court held that the right of suffrage was not among the privileges and immunities to which citizens are entitled under the Constitution (*Minor v. Happersett,* 21 WALL 162). However, in a line of cases beginning with *Ex Parte Yarbrough,* 110 U.S. 651 (1883) and culminating in *Terry v. Adams,* 345 U.S. 461 (1953), it recognized that the Fourteenth (under the equal protection clause) and Fifteenth Amendments protect the electorate from discrimination, even by a "private" political party, in any portion of the electoral process, including a pre-primary primary election. The development of this federally protected right is interesting and significant.

In the *Yarbrough* case, supra, the Court held that there is a Constitutional right to vote for members of Congress, and that Congress has authority to enact laws protecting this right. Then in *Wiley v. Sinkler,* 179 U.S. 58 (1900), it was established that federal courts have jurisdiction of actions for damages because of abridgement of this Federal right of suffrage, and subsequent cases have affirmed this view, e.g., *Swafford v. Templeton,* 185 U.S. 487 (1902); *Nixon v. Herndon,* 273 U.S. 536 (1927); *Nixon v. Canden,* 286 U.S. 73 (1932); *Smith v. Allwright,* 321 U.S. 649 (1944).

The right to vote was held to include the right to have one's vote honestly counted in *United States v. Mosley,* 238 U.S. 383 (1915). This has been extended to embrace the right to have the vote counted at full value without dilution or discount (*United States v. Saylor,* 322 U.S. 385 (1943), and to apply in primary elections as well as to general elections. *United States v. Classic,* 313 U.S. 299 (1941).

Since the Fourteenth and Fifteenth Amendments protect one against disfranchisement only if the wrong is done by a state, discrimination was sought to be accomplished with impunity

by Private Political Party action via primary elections as distinguished from state action. This stood for a while, but that possibility has also been flatly foreclosed by the Supreme Court. Three cases laid the foundation for eliminating this loophole. *Nixon v. Herndon,* supra (1927), invalidated a Texas statute expressly restricting the vote to white citizens. In an attempt to circumvene the effect of this decision, the same result was accomplished by a resolution of the Democratic Party Executive Committee, authorized by state statute, excluding Negroes. This was also invalidated by the Court in *Nixon v. Candon,* supra (1932). Then, when the party passed the same rule in a state party convention, this Court refused to intervene (*Grovey v. Townsend,* 295 U.S. 45 (1935), holding that the refusal of a state officer to permit a person to vote in a Democratic primary election, where such refusal was by virtue of a resolution adopted in a state party convention, was not state action in violation of the Fourteenth and Fifteenth Amendments to the Federal Constitution. But nine years later, the *Grovey* case was expressly overruled in *Smith v. Allwright,* supra (1944). Thus, in *Smith v. Allwright,* this Court affirmed the proposition that the Fourteenth and Fifteenth Amendments, although limited in effect to "State Action," forbade disfranchisement of voters even by a "private" political party in any portion of the electoral process, including primary elections. A later Court of Appeals decision (*Rice v. Elmore,* 165 F. 2d 387 (1948) applied this principle to outlaw discrimination in primary elections, even though there was no reference to the primary in the state constitutions and statutes. The Court went even further in *Terry v. Adams,* 345 U.S. 461. That was a class action instituted by Negro citizens of a Texas county against officers of an organization called the Jaybird Democratic Association, seeking declaratory and injunctive relief. The organization was run like other political parties. Its membership was limited to white people, who were automatically members if their names appeared on the official list of county voters. Its primaries were held prior to the primaries of the Democratic Party and not on the date fixed by state law for primaries. The names of the nominees were put on the ballot in the Democratic Primary without indication that they had been nominated by the organization. The defense was that the organi-

zation was not a political party but a self-governing voluntary club, whose action was not state action. Also relevant to the case at bar is the fact that in the *Terry* case,

(a) the plaintiffs there proceeded by the same route as does plaintiff here, i.e., Title 42 USC 1983 and Title 28 USC 1343;

(b) plaintiffs there sought and obtained equitable relief similar to that sought by plaintiff in the case at bar;

(c) holds that the federal right of suffrage protects against voting discrimination in selecting public officials even though state or local.

Suits at law for damages caused by improper deprivation of the federal right of suffrage, and criminal actions against similar misdeeds have been consistently entertained in the federal forum. But injunctive relief, which by flexible decrees assures the parties the closest approximation of their normal rights and duties, remains hedged about by the traditional refusal to grant equitable relief in cases involving political rights, such as the right to vote (prior to the enactment of the Civil Rights Act of 1957 — Title 28 USC Section 1343[4]).

The basis for this equitable limitation is found in analysis of the equitable powers of the courts. The touchstone of equity jurisdiction is the protection of a property right (*Gee v. Prichard*, 2 Swans 402, 36 Eng. Rep. 670, ch. 1818) and consequently equitable relief could in the past be refused to protect political rights such as the right to vote. Therefore, a court ordinarily does not have the power to issue an injunction or lend the aid of equity to interfere with or attempt to control the exercise of political rights unless jurisdiction is conferred by constitutional or statutory provision. 43 C.J.S. ¶169 at p. 811 and 812; *People v. McWeeney, et al.*, 102 N.E. 233. The Court's reluctance to entertain equitable jurisdiction over voting cases must not be misconstrued as a *lack* of jurisdiction over such subject matter; rather, it is a self-imposed discretionary limitation — the traditional refusal to exercise equitable jurisdiction to protect voting rights. That the Supreme Court's refusal to entertain jurisdiction in such cases as *South v. Peters*, 339 U.S. 271, does not emanate from a *lack* of jurisdiction, but rather from a failure to exercise it, is conclusively demonstrated by the fact that

the Court has exercised jurisdiction over numerous suits at law for damages caused by improper deprivation of the Federal right of suffrage (e.g., *Nixon v. Herndon, Nixon v. Candon, Smith v. Allwright,* supra) and also by the fact that Federal Courts have on occasions exercised equity jurisdiction to protect the right to vote (e.g., *Terry v. Adams, Rice v. Elmore,* supra, and *Smiley v. Holm,* 285 U.S. 355).

In the voting cases in which equitable jurisdiction was not exercised by the Courts they were usually able to find many obstacles which justified the refusal to exercise equitable power, none of which are present in the case at bar. Equitable relief in connection with the right to vote was first directly considered in *Giles v. Harris,* 189 U.S. 475 (1902). In the *Giles* case, the plaintiff simultaneously asked the Court to declare certain state statutes which forbade the registration of Negroes unconstitutional and sought a mandatory injunction to compel the defendant board of registrars to register himself and 5,000 other Negroes under said statutes. The Court refused to exercise its equity jurisdiction. The inconsistency of plaintiff's position and the difficulty of supervising the enforcement of the decree were relied on by the Court, but the case has been cited by lower courts for the sweeping proposition that equity will not protect political rights (*Blackman v. Stone,* 17 F. Supp. 102), a conclusion that is manifestly erroneous in view of *Terry v. Adams, Rice v. Elmore,* supra. Perhaps the compelling reason the Court refused to use the injunctive process in the *Giles* case has been lost sight of: Mr. Justice Holmes pointed out that Title 43 USC 1983, while giving persons the right to equitable relief in voting cases, did not provide a remedy or confer equitable jurisdiction to the Federal courts over such cases. However, Federal courts are given jurisdiction by Title 28 USC 1343 over suits brought under the provisions of Title 43 USC 1983. Title 28 USC 1343 was amended in September, 1957, by adding a new section which pointedly conferred such equitable jurisdiction and remedied any defect noted by Justice Holmes in the *Giles* case.

Three cases involving mandamus proceedings which brought into question the validity of state laws setting up Congressional Districts were decided in 1931. In *Smiley v. Holm,* 285 U.S. 355,

Koening v. Flynn, 285 U.S. 375, and *Carroll v. Becker,* 285 U.S. 380, the issue was the same. The defendants in each case vigorously contended that these were non-justifiable issues, concerning matters which should be left to the "Political Departments" to decide. In each case this defense was rejected; jurisdiction was exercised and judgment rendered to the effect that the respective redistricting acts were invalid and that elections be held at large until appropriate state legislation provided for districts. Then came *Colegrove v. Green,* 328 U.S. 549 (1946). The plaintiff in that case sought a declaratory judgment to the effect that the Illinois redistricting acts denied them equal protection of the laws and asked for an injunction against the coming election. If the decree had been granted, the result would have been an election at large in the State. The *Colegrove* case cannot be taken as holding that the question presented was non-justifiable inasmuch as a majority of the members thought that *Smiley v. Holm* had determined that such issues were justifiable. Mr. Justice Rutledge agreed with the dissent that the Court had jurisdiction but thought that the injunction was rightly denied as a matter of equitable discretion. That the Court did not accept the doctrine of non-justiciability seemingly expressed by Mr. Justice Frankfurter in the *Colegrove* case seems to be borne out by the later case of *MacDougall v. Green,* 335 U.S. 281 (1948). The underlying issues in the two cases are closely similar. In both, if injunctive relief had been granted, an impending election would have been seriously disrupted. In both, the Court sitting as a court of equity was asked to apply the same constitutional clause to the same type of legislative activity on the basis of similar factual data at the behest of similarly situated members of political parties. Although the injunction applied for in the *MacDougall* case was denied by a divided court, the decision was made on the merits. The unanimous assumption of jurisdiction without discussion can be taken as a holding that such political rights cases are justiciable, and further, that equity jurisdiction may be exercised. Between the *Colegrove* and *MacDougall* holdings, *Cook v. Fortson* and *Turman v. Duckworth,* 329 U.S. 674, were decided. In a per curiam decision, the Court held that inasmuch as the election sought to be enjoined had already been held, the cases were moot and should be dis-

missed. They are not illuminating on the injury now being undertaken except for the fact that Justices Black and Douglas noted jurisdiction. *South v. Peters,* supra (1950) is consistent with the prior cases of *Colegrove v. Green* and *MacDougall v. Green,* supra, inasmuch as the refusal to grant relief was not based upon *lack* of jurisdiction but rather on the discretionary refusal to exercise equity jurisdiction, as clearly demonstrated by the language of the holding:

> "Federal Courts consistently refuse *to exercise* their *equity powers* in cases posing political issues . . ." (emphasis added)

Justices Black and Douglas dissented, holding the Georgia County Unit System unconstitutional and pointing out that the Court not only had jurisdiction but should exercise it.

After *South v. Peters, Cox v. Peters,* 208 Ga. 498, 342 U.S. 936 (1952), was decided. That case does not involve an equity question and is not relevant to the present discussion. The recent case of *Terry v. Adams,* supra, conclusively proves that Federal Courts do not lack jurisdiction to grant injunctive and equitable relief in voting cases.

In September, 1957, Congress took matters into its own hands and enacted legislation pointedly conferring equitable jurisdiction over voting cases to the District Courts (28 USC 1343(4)):

> "The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (4) to recover damages OR TO SECURE EQUITABLE OR OTHER RELIEF, under any Act of Congress providing for the protection of civil rights, INCLUDING THE RIGHT TO VOTE. (Emphasis supplied) (Sec. 28USC 1343 (4)).

Federal Courts, therefore, are no longer justified in refusing to exercise equitable jurisdiction to protect voting rights on traditional grounds, any tradition having been superseded by legislation. Therefore, prior decisions of this Court which were based upon this proposition (such as *South v. Peters,* supra, and *MacDougall v. Green,* supra) cannot support Respondents' position.

PROOF OF SERVICE

I, Morris B. Abram, one of the attorneys for William B. Hartsfield, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the ..... day of May, 1958, I served copies of the foregoing Brief to the Supreme Court of the United States on the several parties thereto, as follows:

1. On the Honorable Boyd Sloan, Judge of the United States District Court for the Northern District of Georgia, Atlanta Division, by mailing a copy in a duly addressed envelope, with first class postage prepaid to his Chambers, Third Floor, United States Post Office Building, Atlanta, Georgia.

2. On John Sammons Bell and George D. Stewart, as Chairman and Secretary, respectively, of the State Democratic Committee of Georgia, on the State Democratic Executive Committee of Georgia, on the Georgia Democratic Party, and on Hon. Ben W. Fortson, Jr., Secretary of State of Georgia, by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record, as follows:

To Charles J. Bloch, Esq., First National Bank Building, Macon, Georgia, Attorney for all defendants except Ben W. Fortson, Jr.

To Hon. Eugene Cook, The Attorney General, Judicial Building, Capitol Square, Atlanta, Georgia, and B. D. Murphy, Esq., Citizens & Southern National Bank Building, Atlanta, Georgia, Attorneys for Ben W. Fortson, Jr., Secretary of State of Georgia.

3. On the United States Conference of Mayors, by mailing a copy in a duly addressed envelope, with first class postage prepaid to its Attorneys of Records, as follows:

To Edward Burling, Jr., Union Trust Building, Washington, D. C.

To Wallace M. Cohen, 1832 Jefferson Place, Washington, D. C.

To John J. Gunther, 1707 H Street, N. W., Washington 6, D. C.

.....

Attorney for William B. Hartsfield
1504 Healey Building
Atlanta, Georgia

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 683, Misc.

WILLIAM B. HARTSFIELD,
Petitioner,

v.

HONORABLE BOYD SLOAN, United States District Judge for the Northern District of Georgia,
Respondent.

BRIEF

Of Ben W. Fortson, Jr., Secretary of State of Georgia, in Opposition to Motion for Leave to File Petition for Mandamus.

EUGENE COOK,
Attorney General of Georgia,
FREEMAN LEVERETT,
Assistant Attorney General,
ROBERT H. HALL,
Assistant Attorney General,
B. D. MURPHY,
Attorneys for Respondent, Ben W. Fortson, Jr., Secretary of State, State of Georgia.

EUGENE COOK, Attorney General,
State Judicial Building,
Atlanta 3, Georgia.

FREEMAN LEVERETT, Assistant Attorney General,
State Judicial Building,
Atlanta 3, Georgia.

ROBERT H. HALL, Assistant Attorney General,
State Judicial Building,
Atlanta 3, Georgia.

B. D. MURPHY,
1130 The Citizens and Southern National Bank Building,
Atlanta 3, Georgia.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

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BRIEF

Of Ben W. Fortson, Jr., Secretary of State of Georgia, in Opposition to Motion for Leave to File Petition for Mandamus.

I.

PREFACE.

Ben W. Fortson, Jr., Secretary of State of Georgia, was one of the defendants in the complaint as filed in the district court below, and by reason of Rule 31 (3) of the Revised Rules of this Court, is deemed a "respondent" here, and will accordingly be referred to herein by that designation.

II.

OPINION BELOW.

The opinion and order of the district judge below refusing to convene a three-judge court is not reported, but is found as Appendix A to the petition.

III.

JURISDICTIONAL STATEMENT.

Petitioner relies for jurisdiction on 28 U. S. C. A., § 1651 (a). Respondent contends that jurisdiction is lacking for the reason that the complaint fails to raise a substantial federal question.

IV.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

These are as stated in that part of the Petition denominated "Statutes Involved," and will not be repeated here.

V.

QUESTIONS PRESENTED.

Whether a substantial federal question is presented by the complaint, so as to require a three-judge district court pursuant to 28 U. S. C. A., § 2281, to consider the attack sought to be made on the constitutionality of the Georgia statute governing the method of tabulating votes in state-wide primary elections held by political parties for the nomination of candidates for State office.

Respondent contends that since this Court has on three separate occasions within the last twelve years rejected identical attacks on the same state law, the question is no longer an open one. Respondent further contends that the Civil Rights Act of 1957, 71 Stat. 634, does not change the rule.

VI.

STATEMENT OF THE CASE.

Invoking the "All Writs Act," 28 U. S. C. A., § 1651 (a), petitioner here moves the Court under Rule 30 for leave to file a petition for mandamus seeking to require a judge of the United States District Court for the Northern District of Georgia to convene a special three-judge district court pursuant to 28 U. S. C. A., § 2281, to consider a complaint attacking a state statute governing the method of tabulating votes in primary elections held in Georgia.

The petitioner is a white male voter of Fulton County, seeking an interlocutory and permanent injunction to restrain the operation of a statute of Georgia dealing with primary elections by political parties, as applied to a democratic primary for **State offices** to be held in 1958. No state-wide primary for any federal office will be held. The complaint also seeks a declaration that the statute violates the Fourteenth Amendment.

The State law in question is an Act of 1917 relating to party primary elections, known as the Neill Primary Act. The history and operation of the law are set forth in detail in the opinion of the District Court in **South v. Peters,**[1] involving the same questions as are presented here and brought as a class action by another resident of Fulton County.[2] The statute is not confined in its application to

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[1] (D. C. Ga. 1950) 89 F. Supp. 672.

[2] The gist of the law is that if any political party shall decide to hold a party primary to nominate candidates for State-wide elections the candidate receiving the greatest number of votes in any county shall be deemed to have carried that county and shall be entitled to the "unit" vote of such county in determining the nominee of the party. The "unit" vote is related to the constitutional representation in the lower House of the General Assembly, each County having two unit votes for each such representative. The State of Georgia consists of 159 Counties, and the State Con-

any one political party, and does not require that a primary election be held. If any party chooses to hold a primary election, the provisions of the statute become applicable. To obtain an effective injunction the court must control the action of the party, the executive committee of the party, and the chairman and secretary of the party, and also must control the action of the Secretary of State of Georgia with respect to the general election in November, 1958.

While the primary law was enacted in 1917, and has governed all party primary elections since that time, it substantially adopted party primary rules and practices which had governed party primary elections since the first State-wide party primary was held in the State in 1898. The County Unit System has been followed in party conventions from the earliest days of party politics in the State.

Petitioner does not assert anything personal or peculiar to himself which distinguishes him from other voters of Fulton County, but contends that under the Neill Primary Act due recognition is not given to the population of Fulton County, the most populous county in the State, and that a vote in Fulton County does not have the same value under the County Unit System as a vote in the less populated counties.

By an order of April 1, 1958, the District Judge refused to convene a three-judge court.

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stitution allots representation in the House of Representatives as follows: The eight largest counties each have three representatives, the thirty next largest counties have two each, and the remaining counties have one each (Ga. Constitution 1945, Art. X, Sec. I, Par. II, Code Section 2-7801; Ga. Constitution 1945, Art. III, Sec. III, Par. I, Code § 2-1501). Reapportionment on the basis of population is made after each United States census. The 159 counties have a combined unit vote of 410. To be nominated for Governor a candidate must receive a majority of the county unit votes. Provision is made for a "run-off" election in certain cases, and for the popular vote nominating in case of a tie in "unit" votes.

VII.

THE MOTION FOR LEAVE TO FILE THE PETITION FOR A WRIT OF MANDAMUS SHOULD BE DENIED.

The jurisdiction of this Court to issue writs of mandamus is derived from the "All Writs Act" [28 U. S. C. A., § 1651 (a)], and may be exercised only in aid of its appellate jurisdiction. **Parr v. United States**, 351 U. S. 515, 520. It is "meant to be used only in the exceptional case where there is a clear abuse of discretion or 'usurpation of judicial power' of the sort held to justify the writ in **DeBeers Consol. Mines v. United States**, 325 U. S. 212, 217." **Bankers Life & Casualty Co. v. Holland**, 346 U. S. 379, 383.

The Court has by express rule (Rule 30) said that writs authorized by 28 U. S. C. A., § 1651 (a), are not issued as a matter of right, but of sound discretion sparingly exercised. And Rule 31 provides that a petition which seeks the issuance of a writ of mandamus "shall set forth with particularity why the relief sought is not available in any other court."

But whether the motion here seeks an appropriate remedy, or whether the relief sought is available in the Court of Appeals, in view of the amendment to the three-judge statute, need not, we think, be considered. This is so because the complaint below did not present a substantial federal question, and the judge was right in denying the motion for a three-judge court.[3]

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[3] "The lack of substance in a federal question may appear either because it is obviously without merit or because its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject." *California Water Service v. Redding*, 304 U. S. 252, 255. And see, to the same effect, *Levering & G. Co. v. Morrin*, 289 U. S. 103, 105; *Ex Parte Poresky*, 290 U. S. 303.

Wilentz v. Sovereign Camp W. O. W., 306 U. S. 573, 582, states the rule:

> "The extraordinary procedure before a court of three judges, designed for a specific class of cases sharply defined by the

It may be that the lack of substance in the asserted federal question would both support the ruling below and defeat the jurisdiction of this Court to entertain the petition for mandamus. This also, however, need not be debated, for the lack of substance in the federal question leaves nothing to be said.

The Unsoundness of the Federal Question Which the Petitioner Asserts So Clearly Results From Previous Decisions of This Court as to Foreclose the Subject.

The Georgia County Unit System has heretofore been attacked in four separate cases. Each time it was upheld by the trial court. Each time this Court has affirmed or dismissed the appeal.

The first was **Turman v. Duckworth** (D. C. Ga. 1946), 68 F. Supp. 745, 329 U. S. 675.

There a three-judge federal court in the Northern District of Georgia upheld the County Unit System as valid and as not violating the federal Constitution.

This Court dismissed the appeal. **Turman v. Duckworth**, 329 U. S. 675.

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statute, cannot properly be extended to cases in which there is no substantial basis for relief by injunction restraining the action of state officers in enforcing or carrying into effect a challenged state statute of general application. Ex parte Collins, 277 U. S. 565; Oklahoma Gas & E. Co. v. Oklahoma Packing Co., 292 U. S. 391. Here the issue is not one of jurisdiction of the district court as a federal court, see Ex parte Poresky, 290 U. S. 30, 31; Healey v. Ratta, 292 U. S. 263, but is whether a final hearing by three judges is prescribed by the section and hence whether this Court has jurisdiction to hear the appeal. Smith v. Wilson, 273 U. S. 388. As the case was not one for which a court of three judges is prescribed by § 266, no appeal lies to this Court and it is without jurisdiction to hear the merits of the appeal."

Oklahoma Gas & Elec. Co. v. Oklahoma Packing Co., 292 U. S. 386, 391, is to the same effect.

In a companion case decided at the same time, the same result was reached. **Cook v. Fortson** (D. C. Ga. 1946), 68 F. Supp. 624, 329 U. S. 675.

In **Cook v. Fortson**, the County Unit System as applied to the party primary in a Congressional District was attacked.[4]

In **South v. Peters** (D. C. Ga. 1950), 89 F. Supp. 672, the same questions were again presented and again a three-judge court, with one judge dissenting, upheld the Georgia County Unit System as not violative of the Fourteenth Amendment or other provisions of the federal Constitution. Every contention made in the present case was made in the South case. The District Court reviewed the history of the County Unit System in Georgia and in its findings of fact concluded that it had been in operation since the adoption of the first State Constitution in 1777.

This Court said:

> "The court below dismissed appellant's petition. We affirm. Federal Courts consistently refuse to exercise their equity powers in cases posing political issues arising from a State's geographical distribution of electoral strength among its political subdivisions."[5]

In **Cox v. Peters**, 208 Ga. 498 (67 S. E. 2d 579), the same questions were presented to the Supreme Court of Georgia. That was a suit for damages, the plaintiff contending

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[4] The Georgia statute relating to the County Unit System does not apply to, but expressly excepts, nominations for Members of Congress. "If the County Unit System be imposed in Congressional primaries it is by party action, not State action." *Cook v. Fortson*, 68 F. Supp. 624, 626.

[5] *MacDougall v. Green*, 335 U. S. 281; *Colegrove v. Green*, 328 U. S. 549, are cited as supporting the ruling.

that he had been damaged by reason of the votes cast at the primary of 1950 being counted under the County Unit System. The Supreme Court of Georgia did not fail to uphold the County Unit System in Cox v. Peters; it simply never got to that question, holding that the primary was not an election within the meaning of the constitutional and statutory provisions which the plaintiff there contended gave him the rights he said had been violated.

In that case, this Court dismissed the appeal, "for the want of a substantial federal question."

Cox v. Peters, 342 U. S. 936.

In both **South v. Peters** (339 U. S. 959) and **Cox v. Peters** (343 U. S. 921), motions for rehearing were denied.[6]

Colegrove v. Green, 328 U. S. 549, is a leading case. It is a classic example of the refusal of federal courts to grant relief in a political dispute.[7]

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[6] It is perhaps worthy of note that in Cox v. Peters the Solicitor-General of the United States and the Special Assistant to the Attorney-General filed a brief for the United States, amicus curiae, in support of the motion for rehearing, and that they said:

> ". . . this Court's dismissal of the appeal leaves undisturbed the erroneous ruling of the Supreme Court of Georgia on the only federal question decided by it, and has the unfortunate and plainly unintended effect of preventing appellant from urging on remand that his federal constitutional claim, *although non-justiciable and non-revicwable in federal courts because political questions are involved,* may nevertheless be entertained and adjudicated in the courts of the State of Georgia." (Emphasis supplied.)

[7] "Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State legislators that will apportion properly, or to invoke the ample powers of Congress. . . . The Constitution has left the particulars of many duties in our governmental scheme to depend on the fidelity of the executive and legislative action and, ultimately, on the vigilance of the people in exercising their political rights."

MacDougall v. Green, 335 U. S. 281, is perhaps more directly in point, because it related to an Illinois statute closely akin to the Georgia County Unit Law.[8]

Colegrove v. Green and MacDougall v. Green have been consistently followed.[9]

Especially pertinent is Illinois ex rel. Sankstone v. Jarecki, 116 F. Supp. 422. There the plaintiff whose nominating petition as a new party candidate had been declared insufficient under the Illinois Election Code, attacked the law as unconstitutional, sought declaratory and injunctive relief, and asked that a three-judge court be convened to pass upon the constitutionality of the Illinois law. The District Judge refused to convene a three-judge court and dismissed the complaint, holding **MacDougall v. Green**, 80 F. Supp. 725, 727, 335 U. S. 281, to be controlling, and that, under that decision, the complaint failed to present a substantial federal question.

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[8] "It is allowable State policy to require that candidates for state-wide office should have support not limited to a concentrated locality. This is not a unique policy. See New York Laws 1896, c. 909, § 57, now N. Y. Elec. Laws, § 137 (4); 113 Laws of Ohio, 349, Gen. Code, § 4785-91 (1929), now Ohio Code Anno. (Cum. Supp. 1947), § 4785-91; Mass. Acts, 1943, C. 334, § 2, now Mass. Anno. Laws, c. 53, § 6 (1945). To assume that political power is a function exclusively of numbers is to disregard the practicalities of government. Thus, the Constitution protects the interests of the smaller against the greater by giving in the Senate entirely unequal representation to population. It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the States. . . ."

[9] *Kidd v. McCanless*, 352 U. S. 920;
Radford v. Gary, 352 U. S. 991;
Anderson v. Jordan, 343 U. S. 912;
Colegrove v. Barrett, 330 U. S. 804;
South v. Peters, 339 U. S. 276.

The complainant, evidently believing that a direct appeal would lie to this Court, did appeal, and the Court, without noticing the procedural point mentioned in the brief for one of the appellees, dismissed the appeal for want of a substantial federal question. **People ex rel. Sankstone v. Jarecki**, 346 U. S. 861.

Also in point is Radford v. Gary (D. C. Okla. 1956), 145 F. Supp. 541. There a voter sought a mandatory injunction to compel legislative reapportionment as required by the Oklahoma Constitution, claiming that he was deprived of the equal protection of the law by the failure to reapportion.

The three-judge court dismissed the action, citing **Colegrove v. Green**, supra, **MacDougall v. Green**, supra, and **South v. Peters**, supra. In that case, the complainant relied heavily upon **Dyer v. Abe**, 138 F. Supp. 220, decided by the federal court in the Territory of Hawaii, but the District Court in Oklahoma pointed out, as had the federal court in Hawaii, that "the Territory of Hawaii does not have the same relation to this Court that the State of Illinois has to a federal court within its boundaries." There was a dissent by District Judge Wallace in **Radford v. Gary**, but even he apparently approved **South v. Peters.**[10]

Radford v. Gary was appealed to this Court, and unanimously affirmed. 352 U. S. 991, decided February 25, 1957.

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[10] Judge Wallace said: "In the *South* case the complaint was against the manner in which the local law chose to distribute its electoral strength, admittedly a fundamental right retained by all States."

VIII.

THE CIVIL RIGHTS ACT OF 1957 DOES NOT CHANGE THE RULE.

The plaintiff here invokes 28 U. S. C. A., § 1343, and 42 U. S. C. A., § 1983, as bringing the action within the jurisdiction of the Court.

Apparently reliance is had upon the addition made to 28 U. S. C. A., § 1343, by the Civil Rights Act of 1957.

That Act added a new paragraph to 28 U. S. C. A., § 1343, as follows:

> "(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

If the amendment to 28 U. S. C. A., § 1343, is not merely technical,[11] but enlarges the jurisdiction of the federal courts, it is only to entertain actions authorized by law to recover damages or secure equitable relief under an Act of Congress providing for the protection of civil rights, including the right to vote.

A short and simple answer to any contention that the Civil Rights Act of 1957 operates to change the rule stated

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[11] The House Committee Report accompanying H. R. 6127 (85th Congress, Report No. 291, p. 11) says of the amendments to 28 U. S. C. A., § 1343: "These amendments are merely technical amendments to the Judicial Code so as to conform it with amendments made to existing law by the preceding section of the bill." See 1957 U. S. Code Congr. & Adm. News, Vol. 2, p. 1976. Actually it is highly doubtful whether Section 121 of the Civil Rights Act, amending § 1343 of Title 28, changes the law, as the section it was designed to implement, a proposal to amend 42 U. S. C. A. § 1985, was stricken from the bill by amendment during the Senate debate. 103 Cong. Rec. 11372-73; id. 10693.

by the District Court in **South v. Peters** and affirmed by this Court is that the Act of 1957 does not undertake to protect the right of the plaintiff to vote in a statewide primary to nominate candidates for State offices; nor does that Act undertake to grant to the plaintiff or to any one else the right to vote in such a primary.[12]

The right of the plaintiff to vote for the nomination of party candidates for State offices does not arise under the Constitution and laws of the United States, but under the laws of the State of Georgia.[13] Consequently, the complaint made here, not that he is being deprived of the right to vote, but that his vote will not be given the weight and credit to which he contends it is entitled, does not present a substantial federal question.

The Civil Rights Act of 1957 does not grant to the plaintiff any right to vote, nor does it authorize the intervention of a federal court of equity to protect his right to vote for State offices, or at any primary to nominate party candidates for State offices.

Since the Civil Rights Act of 1957, even if construed to enlarge the jurisdiction of the federal courts with respect to political controversies, limits such enlargement to actions to recover damages or secure equitable or other relief under any Act of Congress providing for the protec-

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[12] In *South v. Peters* it was alleged that the party would hold a primary for United States Senate, Governor and other State offices. 87 F. Supp. at p. 674. Here it is alleged only that the party is planning to hold a primary to nominate candidates for state-wide offices of the State of Georgia. (Complaint, ¶10, R. 34). There will be no election of United States Senator in Georgia this year.

[13] *Minor v. Happersett*, 21 Wall. 162, 170;
Ex parte Yarbrough, 110 U. S. 651, 664, 665;
McPherson v. Blocker, 146 U. S. 1, 37, 38;
Guinn v. United States, 238 U. S. 347;
Breedlove v. Suttles, 302 U. S. 277.

tion of the right to vote, and since there is no Act of Congress which grants or undertakes to protect the right of the plaintiff to vote in a primary to nominate candidates for State offices, the questions presented here are purely political. Whether or not the complaint otherwise presents a justiciable controversy, equity is without jurisdiction to enforce a purely political right. This is especially true of our federal courts of equity.[14]

CONCLUSION.

The complaint does not assert the violation of any private or individual right of the plaintiff and there is no allegation that he has been or will be deprived of the right to vote. He seeks to assert a public wrong suffered by the voters of Fulton County generally, but the wrong he alleges is a political wrong, one which can only be corrected by the political branch of the government.[15]

As to this respondent, the Secretary of State of the State of Georgia, the complaint seeks to enjoin him from certifying to the several ordinaries of the various counties of Georgia for the official ballot for the general election in November, 1958, the names of candidates for state-wide offices who have been nominated under the county unit system. This clearly does not present a justiciable controversy, but calls for the judgment of the Court upon purely political questions.

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[14] *In re Sawyer*, 124 U. S. 200;
Walton v. House of Representatives, 265 U. S. 490;
Taylor v. Beckham, 178 U. S. 548, 570;
Giles v. Harris, 189 U. S. 475;
Lane v. Wilson, 307 U. S. 268;
Colegrove v. Green, supra;
MacDougall v. Green, supra.

[15] *Georgia v. Stanton*, 6 Wall. 50;
Taylor v. Beckham, 178 U. S. 549;
Cherokee Nation v. Georgia, 5 Pet. 1;
Pacific Tel. & Tel. Co. v. Oregon, 223 U. S. 118;
And see *Rhode Island v. Massachusetts*, 12 Pet. 753.

This respondent respectfully submits that Judge Sloan properly refused to convene a three-judge court and that the motion for leave to file the petition for mandamus should be denied.

Respectfully submitted,

EUGENE COOK,
Attorney General of Georgia,

FREEMAN LEVERETT,
Assistant Attorney General,

ROBERT H. HALL,
Assistant Attorney General,

B. D. MURPHY,

Attorneys for Respondent, Ben W. Fortson, Jr., Secretary of State, State of Georgia.

EUGENE COOK, Attorney General,
State Judicial Building,
Atlanta 3, Georgia.

FREEMAN LEVERETT, Assistant Attorney General,
State Judicial Building,
Atlanta 3, Georgia.

ROBERT H. HALL, Assistant Attorney General,
State Judicial Building,
Atlanta 3, Georgia.

B. D. MURPHY,
1130 The Citizens and Southern National Bank Building,
Atlanta 3, Georgia.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 683, Misc.

WILLIAM B. HARTSFIELD,
Petitioner,

v.

HONORABLE BOYD SLOAN, United States District Judge for the Northern District of Georgia,
Respondent.

BRIEF

(Under Rule 31(3) of the Supreme Court of the United States) of John Sammons Bell, as Chairman of the Georgia State Democratic Executive Committee; George D. Stewart, as Secretary of the Georgia State Democratic Executive Committee; The Georgia State Democratic Party in Opposition to the Motion of William B. Hartsfield for Leave to File a Petition for a Writ of Mandamus.

CHARLES J. BLOCH,
520 First National Bank Building,
Macon, Georgia,
Attorney for Respondents Named.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 683, Misc.

WILLIAM B. HARTSFIELD,
Petitioner,

v.

HONORABLE BOYD SLOAN, United States District Judge for the Northern District of Georgia,
Respondent.

BRIEF

(Under Rule 31(3) of the Supreme Court of the United States) of John Sammons Bell, as Chairman of the Georgia State Democratic Executive Committee; George D. Stewart, as Secretary of the Georgia State Democratic Executive Committee; The Georgia State Democratic Party in Opposition to the Motion of William B. Hartsfield for Leave to File a Petition for a Writ of Mandamus.

The respondent-objectors are the defendants in the case from which the motion stems. They have been advised that they have the right under the Rules of the Supreme Court to file this response and these objections at this juncture.

At the threshold, these objectors respond to the "Statement of Jurisdiction," and "Questions Presented" (R. p. 3). We believe that our response to those portions of the petition should suffice to show that the motion should not be granted.

We respectfully suggest:

Even if the law and the rules of the Supreme Court should be construed so as to authorize the Court to issue the writ of mandamus which will be sought if the motion is granted, the Court should not in the present posture of the case, exercise that authority.

In order that the Court may have the full facts before it and may thereby know the present posture of the case, it is necessary to add to the end of the "Statement of the Case" as it appears on pages 6-8 of the Hartsfield motion and petition the following:

The Court will perceive that the motion of the present objectors upon which the Judge below proceeded in paragraph 9 thereof (R. p. 30), averred that the District Judge to whom the complaint was presented had authority to dismiss it for want of jurisdiction when the question involved is the complaint lacked the necessary substance, and moved the Court "to declare that the action is not one for consideration by a three judge court or to dismiss the action" (R. p. 30).

The Judge, after hearing arguments and considering briefs, on April 1, 1958, rendered an opinion concluding: ". . . this court refuses to convene a three-judge court as prayed in the complaint" (R. p. 25).

The Court did not pass on the alternate prayer of the motion—"to dismiss the action" (R. p. 30).

As this is written, May 7, 1958, the Court has passed no order on the motion to dismiss.

We respectfully submit that our suggestions hereinbefore made are sound, and should dispose of the motion.

The suggestions are based on the following:

Counsel for the petitioner contend that the power and jurisdiction of this Court to issue the writ of mandamus sought are sustained by:

Ex Parte Bransford, 310 U. S. 354 (1940);
Ex Parte Poresky, 290 U. S. 30 (1933);
Ex Parte Metropolitan Water Co., 220 U. S. 539 (1911).

At the time these three cases were decided, the statute as to the duty of a trial judge in convening a three-judge court was Judicial Code, Section 266, 28 U. S. C., Section 380, which provided:

> "Whenever such application . . . is presented to . . . a judge, **he** shall immediately call to his assistance to hear and determine the application two other judges . . ."

That statute no longer exists.

The present governing statute is Title 28 U. S. C., Section 2284 (1), which provides:

> "The District Judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding."

We think the District Judge still has the right to declare that the case is not one for a three judge Court. That was the reason for the language in the motion filed below (R. p. 30) . . . that the Court declare the action not one for consideration by a three judge court. While in his

opinion the Court refused "to convene a three judge court as prayed in the complaint" (p. 25), that refusal must be read in the light of our motion and petitioner's prayer in his original petition, "that a court consisting of three judges be convened . . ." (p. 45).

So, under the present statute, the action of the District Judge is reviewable by appeal to the Court of Appeals for the Fifth Circuit as will be seen more in detail hereinafter.

At the present juncture, though, we respectfully request the Court to consider what would happen if the prayer of the petition for mandamus (p. 20) were granted in the light of the existing statute [Title 28, U. S. C. 2284(1)]. This Court is requested to direct Judge Sloan to vacate his order of April 1, 1958, "and to convene without delay the three judge court . . ."

Even if the case were a proper one for a three judge court, Judge Sloan would not "call to his assistance two other judges." His duty would, in a proper case for a three judge court, be to "immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge."

The prime effect of this change in the statute is to demonstrate that now the Courts of Appeals of the respective circuits have jurisdiction of the subject matter. A secondary effect is that if the Supreme Court should under the "all writs statute" (Title 28, U. S. C. 1651) deem it legal, necessary and proper to issue the writ of mandamus, the writ, to be effective, would have to be directed to the Chief Judge of the Circuit.

But, it seems to us:

(1) That the Supreme Court has by its new rules limited its jurisdiction so as to exclude the proposed petition;

(2) That applicable decisions since the passage of Title 28—2284 demonstrate that the question of whether a three judge court should be convened can and should be decided by the appropriate Circuit Court of Appeals. The matter is now one within its appellate jurisdiction, and can be decided either upon a direct appeal, or by mandamus proceeding. The "all writs" statute is just as available to a Circuit Court of Appeals as it is to the Supreme Court.

With respect to the Rules of the Supreme Court: Rule 30 (U. S. C. A., Title 28—Rules) provides:

> "The issuance by the court of any writ authorized by 28 U. S. C. A., Sec. 1651 (a), is not a matter of right but of sound discretion sparingly exercised." (Citing cases "by way of illustration only.")

Then Rule 31 (3) provides:

> "If the petition seeks issuance of a writ of mandamus . . . , it shall set forth with particularity **why the relief sought is not available in any other court**." (Emphasis supplied.)

The petition here does not and cannot comply with that rule.

The relief sought is available in the Circuit Court of Appeals even in the present posture of the case. There would be no doubt whatsoever on that question if Judge Sloan acted upon our motions to dismiss.

With respect to applicable decisions: **Ex Parte Cogdell**, 342 U. S. 163, 72 S. Ct. 196, 96 L. Ed. 161, was decided December 11, 1951. The headnote of that case as it appears in 72 S. Ct. is:

> "Where question, whether statute requiring that three judge court hear applications for injunctions restraining enforcement, operation or execution of act

of Congress for repugnance to Constitution, applies to suit to enjoin enforcement of congressional enactment affecting only District of Columbia, was before Court of Appeals as necessary adjunct of determination of its jurisdiction to hear appeal from denial of a motion to convene three judge court, mandamus proceeding to compel convening of three judge court would be continued by Supreme Court to await views of Court of Appeals on such issue, since question was one of general importance to judicial administration in District of Columbia. 28 U. S. C. A., Secs. 1253, 2282."

While, presently, there is no appeal to the Court of Appeals pending, the **relief sought here is available there.**

"Subject to review, trial judge may determine whether case requires statutory three-judge court."

Schermerhorn, Inc., v. Holloman, 74 F. 2d 265 (1). Certiorari denied 294 U. S. 721.

That case arose under the old statute (28 U. S. C., Sec. 380). The trial judge had refused to convene the Court and dismissed the bill.

Even if the "dismissal of the bill" is a prerequisite to jurisdiction of the Court of Appeals, which we deny, certainly this Court will, before passing on the motion here before it, await the action of the District Judge on the motion to dismiss pending before him.

Since the change in the three-judge statute, the Tenth Circuit Court of Appeals has decided **Wicks v. Southern Pacific Co.,** 231 F. 2d 130, and at page 135 quoted from the Schermernorn case as follows:

"A trial judge is authorized to determine in the first instance whether a case is one requiring disposition by a special court convened in accordance with the statute, and he is not required to call two additional

judges to his assistance unless the case is of that nature (cases cited). **His decision upon the question is subject to review.**"

The Court then held that it had jurisdiction to entertain and dispose of the appeal. (Certiorari denied, 351 U. S. 946, 76 S. Ct. 845.)

If it had jurisdiction to entertain and dispose of the appeal, certainly it would have had jurisdiction to entertain a petition for mandamus, prior to the dismissal of the action by the trial judge. (Section 1651 of Title 28) seeking to compel him "immediately to notify the chief judge of the circuit" under Title 28, U. S. C., Sec. 2284.

The late Judge John J. Parker wrote for the Fourth Circuit Court of Appeals in **Jacobs v. Tawes**, 250 F. 2d 611, decided December 26, 1957. At page 615 he said:

> "If the single District Judge in dismissing the case for lack of jurisdiction commits error, the error can be corrected by appeal to the Court of Appeals without burdening the Supreme Court with a direct appeal."

And, he might have alluded to the burden on the trial judge imposed by the grant of a writ of mandamus. The Supreme Court considered that factor when in **Bankers Life & Casualty Co. v. Holland, Judge**, 346 U. S. 379, the Court said:

> "Mandamus, prohibitions and injunctions against judges are drastic and extraordinary remedies. We do not doubt power in a proper case to issue such writs. But they have the unfortunate consequence of making the judge a litigant, obliged to obtain personal counsel or to leave his defense to one of the litigants before him. These remedies should be resorted to only where appeal is a clearly inadequate remedy . . . As extraordinary remedies, they are reserved for really extraordinary causes."

The Judge below was correct in his ruling that this is not a case for a Three Judge Court.

The Judge was authorized to hold that this is not a case for a three Judge Court, either if:

(a) The question presented by the complaint is obviously without merit; or

(b) Because its unsoundness so clearly results from the previous decisions of the Supreme Court of the United States as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.

Citing cases (R. pp. 22-25), the Judge based his opinion on the second prong of the rule.

Counsel for the petitioner say (R. pp. 9-10):

> "This Court has not upheld the constitutionality of the county unit system in any case arising under the statute attacked, or in any other decision,"

and,

> "Moreover, the fact that this Court may uphold a lower court's discretionary refusal to lend the aid of equity to protect the right to vote cannot justify the refusal of the court below to convene a three-judge court" (R. p. 17).

Palpably, these are statements of petitioner's concepts of what happened when this question was here before.

Let us see what the record discloses.

South v. Peters, 89 F. Supp. 672, was decided by a majority of a Three Judge Court composed of Circuit Judge Samuel H. Sibley, and District Judges Davis and Andrews, the latter dissenting. At page 674 under the heading "the issues" the opinion commenced:

"The Georgia Statute attacked is the Act of August 14, 1917, now codified in Georgia Code of 1933 as Sections 34-3213 through 34-3218 relating to primary elections and commonly known as the Neill Primary Act." (This is the same Act attacked in the instant suit. R. p. 43.)

The Court (op. cit. 678) deemed the crucial questions for decision to be:

1. "Does the federal Constitution forbid that a State may, in an election affecting the whole State, or a portion thereof, subdivide the territory affected into smaller units, to wit, counties, for the purpose of taking the vote and ascertaining the result, the subdivisions having materially different populations?"

2. "Is the question of the propriety of such subdivisions a political question of which a court of equity may not take cognizance?"

At page 680, the Court answered the questions:

1. "The Federal Constitution does not take from the States their right to set up their own internal organization and prescribe the manner of State elections. **We do not think the Fourteenth Amendment condemns the Neill Primary Act as to them.**" (Emphasis added.)

2. "If there is a political wrong, the remedy is in the State Legislature which can so amend the Act as to deal with Fulton County specially. Certainly, this court of equity should not adjudge the matter."

(Previously [p. 678] the court had said that the questions would be discussed "as though the primary was a true election, but also noting the difference between the two." Thus, the complaining party was given the benefit of every doubt).

When the case reached the Supreme Court (339 U. S. 276; 70 S. Ct. 641), the Court (7 to 2) foreclosed the subject and left no room for legal inference that the question sought to be raised could be the subject of legal controversy by citing previous decisions of the court and saying:

> "The court below dismissed appellants' petition. We affirm. Federal Courts consistently **refuse to exercise their equity powers** in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." (Emphasis added.)

Judge Sloan was eminently correct when he paid no heed to the argument that the Civil Rights Act of 1957 had changed the situation.

The three-judge court in South v. Peters decided the case, answered the first question propounded, assuming that it had the jurisdiction, the power so to do. It simply wouldn't exercise that power and grant the injunction because it thought the Neill Primary Act was valid. The Supreme Court, in affirming, assumed that the Federal courts had "equity powers" to entertain the case but that they would not be exercised in cases posing political issues.

If the trial court did not have power and jurisdiction in South v. Peters, or, to put it a little differently, if the complaint there, which is in almost exactly the same language as the complaint here, did not present a substantial federal question, the Civil Rights Act of 1957, in adding subsection (4) to 28 U. S. C., Section 1343, did not grant such jurisdiction or cause the same facts and allegations to present a substantial federal question. This is so because 28 U. S. C., Section 1343, as so amended, does not enlarge the jurisdiction of the federal courts so as to permit actions to recover damages or to secure equitable or other relief for the protection of the right to vote in a party primary to nominate candidates for state offices.

The amendment to 42 U. S. C., Section 1971, does protect the right to vote, but is expressly limited in its scope to the right to vote in general, special or primary elections for certain enumerated federal offices. It is clear, therefore, that no right of the plaintiff protected by either 42 U. S. C., Sec. 1971 (a) or 42 U. S. C., 1971 (b) is here asserted. Consequently, the amendment to 28 U. S. C., Sec. 1343, neither enlarges the jurisdiction of the court nor makes a substantial federal question where none existed before.

Certainly, Title 42 U. S. C., Section 1983, is not such an Act as is contemplated by the addition of subsection (4) for most assuredly the right of a member of a political party to participate in the nominating process of his political party is not a right, privilege or immunity secured by the Constitution. (See **Minor v. Happersett**, 21 Wallace 162.)

Recently (1952), the Supreme Court in the case of **Remmey v. Smith**, 342 U. S. 916, 72 S. Ct. 368, 96 L. Ed. 685, denied an application for certiorari sought to review a decision of a three-judge court headed by Circuit Judge Biggs and reported 102 Federal Supplement 708.

In the opinion of District Judge Bard, concurring with the holding that the suit should be dismissed, is this language:

> "The Civil Rights Acts, upon which this suit is based, provide redress for violations of federal rights. The crucial question is what **federal** right is violated by the Pennsylvania legislature's failure to reapportion the **state** legislative districts every ten years in accordance with the **state** constitution.
>
> "The free and untrammeled right or privilege of suffrage is not given by any Articles of or Amendments to the Federal Constitution. The Constitution guarantees a republican form of government only to

the extent that the citizens of the various states are to select their own form of government, as they did in the original thirteen states, and to the extent that the states are duty bound to provide a government 'by the people.' This, however, is the full limit of national control of state affairs, and the state assumes absolute control thereafter. U. S. Const. Art. IV, Sec. 4; Minor v. Happersett, 21 Wall. 162, 170-176, 22 L. Ed. 627; Keogh v. Neely, 7 Cir., 50 F. 2d 685.

"The Fourteenth Amendment did not add any right to vote; it only guaranteed additional protection to the rights and privileges a citizen already had. Minor v. Happersett, supra.

"Appropriate here are the words of Mr. Justice Peckham in Pope v. Williams, 193 U. S. 621, at page 632, 24 S. Ct. 573, 575, 48 L. Ed. 817: 'The privilege to vote in any state is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States. Minor v. Happersett, 21 Wall. 162, 22 L. Ed. 627. It may not be refused on account of race, color or previous condition of servitude, but it does not follow from mere citizenship of the United States. **In other words, the privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper,** provided, of course, no discrimination is made between individuals in violation of the Federal Constitution.' (Emphasis added.)

"What types of discrimination in state elections are forbidden by federal law? Section 1 of the Fifteenth Amendment and Section 31 of Title 8, U. S. C. A., prohibit discrimination on the ground of race, color or previous condition of servitude. The Nineteenth Amendment bans discrimination on account of sex. To interpolate into these provisions the right that

an individual's vote in an election for state offices should not be diluted by unequal apportionment but should be equal in weight to each other vote cast in the state would be legislative action by judicial pronouncement."

Only where the "deprivation" is on account of the race of the alleged member of the political party has the rule of Minor v. Happersett (alluded to by Judge Sibley), been changed. That is the self-evident meaning of **Nixon v. Herndon**, 273 U. S. 536, 47 S. Ct. 446, 71 L. Ed. 759. There holding invalid, as contravening the Fourteenth Amendment, a Texas statute forbidding negroes to participate in Democratic party primaries in Texas, Justice Holmes noted that while the amendment applies to all, it was passed "with a special intent to protect the blacks from discrimination against them." The gist of the holding is in the last sentence of the opinion: "States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case."

The gist of the Hartsfield action is contained in paragraphs 31, 33, 34 and 35 thereof (R. pp. 42-44).

His contention is that the County Unit Statutes (Ga. Code, Sections 34-3213 through 34-3218) dilute, diminish and abridge his vote and right to vote and constitute a deprivation of his liberty and property by the State of Georgia without due process of law.

What had the courts said as to this right to vote in a primary? What had the courts said as to the nature of this right of which he claimed to have been deprived? Did what the courts had said justify Judge Sloan in holding that the subject matter of the complaint had been

foreclosed and left no room for inference that the question could be the subject of controversy?

Hartsfield alleged himself to be within that class of persons qualified as electors within the meaning of Georgia constitutional provisions. (Art. II, Section I, paragraphs I-IV, Georgia Code Annotated, Sections 2-701-704.)

In 1951, one W. M. Cox sued, in a Georgia state court, the officers of the Democratic Party of Georgia for damages claiming that he had been discriminated against by the application of the county unit system, and thus deprived of the "equal protection of the laws" guaranteed by the Fourteenth Amendment. He claimed to have been deprived of his right to vote guaranteed by certain of the same sections of the Georgia Constitution relied on by Hartsfield, notably those embraced in the Code as Sections 2-701, 2-702, 2-704.

A general demurrer to his petition was sustained. The case came to the Supreme Court of Georgia (208 Ga. 498).

In the body of the opinion, the Court explicity held that "The right to vote for Governor in a Democratic primary does not arise under the Constitution or laws of the United States" (p. 502) and quoted at page 505, thus: "A primary election is merely a substitute for a convention. It is not an election to office, it being distinguishable from an election of officers in that it precedes such election and is merely a choice of candidates or nominees of political parties, while an election is the final choice of the entire electorate."

The Court called attention to the contention of the plaintiff that the right to vote in such a primary does arise under the Constitution and laws of the State of Georgia, and that the equal protection clause of the Fourteenth Amendment to the Federal Constitution protected him in this right (op. cit. 502).

That contention was answered in the categorical ruling of the Court in the headnote, as follows:

> "A party primary held under the provisions of Code Section 34-3213 merely chooses candidates or nominees of a political party to be submitted to the entire electorate in the general election, and is not an 'election' within the meaning of that term as used in the statutory and constitutional provisions of Georgia conferring upon its citizens the right to vote in an election; and the right to participate in such a primary does not come within the protection of the Fourteenth and Fifteenth amendments to the Federal Constitution."

That part of the quoted headnote down as far as the semi-colon is the State Supreme Court's construction of the State constitution.

At page 18 of the motion here under consideration, counsel for the movant discuss **Cox v. Peters**, and say that it is in

> "diametic (sic) opposition to the holding in **Chapman v. King**, supra, to the effect that the Georgia Democratic Primary is constitutionally protected. . . . The theory of the Georgia Court in the Cox case is so utterly foreign to the past and recent expressions of this Court as to obviate serious consideration."

Counsel evidently were there referring to that part of the headnote which followed the semi-colon, but counsel must have known that the Georgia Supreme Court allued to Chapman v. King and said of it:

> ". . . but an examination of the opinion in that case will show that this statement (that the primary in Georgia was made an integral part of the election machinery) was predicated in part upon the pro-

visions of article 2, section 1, paragraph 8, of the Constitution of 1877 (Code of 1933, Sec. 2-608). This provision in the amendment of 1908 of the Constitution of 1877 was stricken and omitted from the Constitution of 1945; and an examination of the minutes of the Constitutional Commission, Vol. I, page 112, will disclose that it was purposely stricken and omitted from the present Constitution of this State so as to take the party primaries without the ruling in Smith v. Allwright, 321 U. S. 649 (supra), and leave them purely party primaries."

Whether this elimination from the Georgia Constitution had the intended effect, or not, is not important in the case at bar. Assuming for the sake of the argument, that Georgia's primary, when and if held, is still an integral part of the election machinery, that fact would not help Mr. Hartsfield's case. Chapman v. King does not govern his case for the categorical ruling there was this and only this:

> "The exclusions of voters made by the party by the primary rules became exclusions enforced by the State and **when these exclusions are prohibited by the Fifteenth Amendment because based on race or color**, the persons making them effective violate under color of law a right secured by the Constitution and laws of the United States within the meaning of the statute which is here sued on." (154 F. 2d at page 464; emphasis supplied.)

The ruling in **Smith v. Allwright**, 321 U. S. 649, was that the right of a citizen of the United States to vote for the nomination of candidates for the **United States Senate and the House of Representatives** in a primary which is an integral part of the elective process is a right secured by the Federal Constitution, and that right might not be abridged by the State on account of his race or color. The

action of the party there was held to be state action in violation of the **Fifteenth Amendment.**

Counsel for movant also refer to **Terry v. Adams**, 345 U. S. 461. That case too is ruled by the Fifteenth Amendment.

All of this, the Supreme Court of the United States must have had in mind when Cox v. Peters reached it on appeal (342 U. S. 936). Mr. Justice Black and Mr. Justice Douglas were of the opinion that probable jurisdiction should be noted, but Chief Justice Vinson, and Associate Justices Frankfurter, Jackson, Burton, Reed, Minton, Clark, thought that the motion to dismiss should be granted. It was. The appeal was dismissed "for the want of a substantial federal question." A motion for rehearing was denied. . . . 343 U. S. 921. If there was no substantial federal question there, certainly there is none here, and Judge Sloan was eminently correct when he said that the "federal question sought to be raised here is unsubstantial for the reason that the previous decisions of the Supreme Court of the United States foreclose the subject and leave no room for inference that the question sought to be raised can be the subject of controversy.

In basing his finding on the "second prong" it was not necessary for Judge Sloan to find that the Supreme Court had "upheld the constitutionality of the county unit system." It was merely necessary for him to find what he did find, a finding that is indisputably correct.

Of what legal right is Hartsfield deprived when he is permitted to vote in a primary conducted by the Democratic Party under the County Unit system? Hartsfield alleges (R. 32) that the Georgia State Democratic Executive Committee is the governing body of the defendant Democratic Party. As such, the Georgia Democratic Executive Committee could, so far as state law is concerned,

nominate a candidate for the offices named in Section 34-3212 of the Code. Or, the Georgia State Democratic Executive Committee could meet and call upon the County Executive Committees to send delegates to a convention which could nominate the candidates of the Democratic Party of Georgia for those offices. Of what right would Hartsfield be deprived in either of these instances? The answer is plainly "none". And if the Democratic Executive Committee gives him a greater right than he is entitled to by law, and grants him the privilege of voting at a primary voluntarily called by it, conducted under the County Unit system, how can he thereby be deprived of any constitutional right? The Fourteenth Amendment does not create rights. It merely protects rights in cases where it is applicable.

CONCLUSION.

Since **Colegrove v. Green,** 328 U. S. 549, 66 S. Ct. 1198, the Supreme Court has consistently held that such issues as are presented here do not constitute a substantive federal question.

The cases so holding are:

Colegrove v. Barrett (1947), 330 U. S. 804, 67 S. Ct. 973, 91 L. Ed. 1262;

McDougall v. Green (1948), 335 U. S. 281, 69 S. Ct. 1, 93 L. Ed. 3;

South v. Peters (1950), 339 U. S. 276, 70 S. Ct. 641, 94 L. Ed. 834;

Tedesco v. Board of Supervisors of Elections for Parish of Orleans (1950), 339 U. S. 940, 70 S. Ct. 797, 94 L. Ed. 1357;

Cox v. Peters (1952), 342 U. S. 936, 72 S. Ct. 559, 96 L. Ed. 697;

Remmey v. Smith, 342 U. S. 916, 72 S. Ct. 368, 96 L. Ed. 685;

Anderson v. Jordan (1952), 343 U. S. 912, 72 S. Ct. 648, 96 L. Ed. 1328;

People of State of Illinois v. Jarecki (1954), 346 U. S. 861, 74 S. Ct. 107, 98 L. Ed. 373;

Kidd v. McCarless (1957), 352 U. S. 920, 77 S. Ct. 223, 1 L. Ed. 2d 157;

Radford v. Gary (1957), 352 U. S. 991, 77 S. Ct. 559, 1 L. Ed. 2d 540.

We respectfully submit that the motion should be denied, and leave not granted to file the petition for the writ of mandamus against Judge Sloan.

CHARLES J. BLOCH,
Counsel for Respondents
and Objectors Named.

Proof of Service.

I, Charles J. Bloch, counsel for the respondents and objectors named, do hereby certify that on the ..... day of ....., 1958, I served copies of the foregoing Response and Objections on the several parties thereto, as follows:

1. On the Honorable Boyd Sloan, Judge of the United States District Court for the Northern District of Georgia, by mailing a copy in a duly addressed envelope, with first-class postage prepaid to him at Gainesville, Georgia, and another to him, care United States Post Office Building, Atlanta, Georgia;

2. On Ben W. Fortson, Jr., Secretary of State of Georgia, by mailing copies in duly addressed envelopes, with first-class postage prepaid, to Hon. Eugene Cook, the Attorney General, Judicial Building, Capitol Square, Atlanta, Georgia, and B. D. Murphy, Esq., Citizens and Southern National Bank Building, Atlanta, Georgia;

3. On William B. Hartsfield, Petitioner, by mailing copies in duly addressed envelopes with first-class postage prepaid, to each of the following:

Morris B. Abram,
1504 Healey Building,
Atlanta 3, Georgia.

Charles L. Weltner,
1405 Fulton National Bank Building,
Atlanta 3, Georgia.

Osgood O. Williams,
1018 Healey Building,
Atlanta 3, Georgia.

Maurice N. Maloof,
1504 Healey Building,
Atlanta 3, Georgia.

.....

Counsel for the Respondents and
Objectors Named.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 683, Misc.

WILLIAM B. HARTSFIELD,
Petitioner,

v.

HONORABLE BOYD SLOAN, United States District Judge
for the Northern District of Georgia,
Respondent.

RESPONSE

Of John Sammons Bell, as Chairman of the Georgia State Democratic Executive Committee; George D. Stewart, as Secretary Thereof; The Georgia State Democratic Executive Committee; To Reply Brief of Defendant.

CHARLES J. BLOCH,
520 First National Bank Building,
Macon, Georgia,
Attorney for Respondents Named.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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Of John Sammons Bell, as Chairman of the Georgia State Democratic Executive Committee; George D. Stewart, as Secretary Thereof; The Georgia State Democratic Executive Committee; To Reply Brief of Defendant.

On May 29, 1958, we were served with a reply brief of the petitioner. In the beginning of that brief counsel state that the "petition remains undismissed." They seem to deem that a fact of high importance. It remains a fact as this is written (May 22, 1958).

Counsel for the petitioner labor mightily to bring Mayor Hartsfield within the scope of Title 28, Section 1343 United States Code as that section was amended by the so-called Civil Rights Act of 1957.

As so amended the pertinent part of that section is:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: . . .(4) To recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights, including the right to vote."
>
> Title 28, U. S. C. A., Section 1343 (1957 Pocket Part).

We refrain from repeating the discussion as to the phrase "under any Act of Congress" contained in our original brief.

We will confine the brief discussion here to the phrase "protection of civil rights, including the right to vote."

The gist of the argument of petitioner's counsel is that the action seeks to protect a civil right of Mayor Hartsfield, to wit, his right to vote in a statutory primary conducted by the Democratic Party of Georgia at its expense under the Georgia law for the nomination of State officers.

If they are permitted, as they so assiduously attempt, to carve out and ignore the phrase "under any Act of Congress," what is left? What "civil right"—what "right to vote" is sought to be protected?

If Mayor Hartsfield has any "right to vote" it is a right to vote in a primary conducted under the County Unit law. That is the only kind of statutory primary that a political party can hold in Georgia for the nomination of

statewide officers. If a political party in Georgia cannot hold a statutory primary under the County Unit system for the purpose of nominating its candidates to appear on the ballot in the general election, it cannot hold a statutory primary at all (Code of Georgia, Section 34-3212). In that event "his civil right"—his "right to vote" (in a statutory primary for state officers) will cease entirely. If he has a "right to vote" in a statutory primary of a political party, that "right to vote" has affixed to it by law the conditions of Section 34-3212 of the Georgia Code. He takes the right with the legal condition affixed to it.

That essential, fundamental fact distinguishes **United States v. Saylor**, 322 U. S. 385, cited by petitioner's counsel to support their statement that "this Court has recognized that the right to have one's vote counted without dilution (as in stuffing ballot boxes) is as equally protected as the right to register and to vote."

There, with Justices Douglas, Black and Reed dissenting, the majority of the court upheld the views of the government expressed through its counsel, Mr. Paul A. Freund, and held "the federal statute denouncing conspiracy to injure any citizen in free exercise of any right or privilege secured to him by the Federal Constitution or laws embraced conspiracy by election officers to stuff a ballot box in an election in which a member of Congress was to be elected" (64 S. Ct. 1101 [2]).

In that case, the law under which the election for United States Senator was held furnished the yardstick. In voting for the **election** of a United States Senator, each qualified voter had one vote to be considered quantitatively equal to that of every other voter. If, in reality, Brown received 600 votes, and Gray 900 votes, the election managers by fraudulently stuffing 600 additional votes for Brown into the box, would diminish and dilute the "full

value and effect" assigned to each Gray vote by the law of the State. The legal yardstick would be distorted by the act of the managers.

And, in this case, the law under which the nomination by a political party of candidates for certain offices may be accomplished in a statutory primary, furnishes the yardstick, not that each individual vote is to be counted equally but that it shall be considered as set out in that law (Ga. Code, Sec. 34-3212).

There is no provision in the Constitution or laws of the United States or the State of Georgia which compels a political party nominating candidates for offices in a primary to grant to each participant in the primary an equal voice with every other participant.

That is the salient difference between this case, and the Saylor and Classic cases.

In those cases, the election officers lessened the quantitative effect which should have been assigned to each vote by the law of the state in which the elections were being conducted. The legal value of each vote was wrongfully diminished.

Here, each vote is counted in accordance with the law under which the primary is held. Each vote is given its **legal value**.

There is no provision in the Constitution or laws of the United States which compels a state to assign a legal value to each nominating expression equal to all others.

Mayor Hartsfield is not here trying to protect his civil right to vote. He is trying to destroy it by destroying Georgia's primary law, and, so, not only destroy his statutory right or opportunity to express a choice for nomina-

tion of officers but destroy the right and opportunity of every other Georgian qualified to participate in nominating primaries, so to do.

The fundamental fallacy in Mayor Hartsfield's position is that he assumes that a state must require every political party nominating candidates to give to each participant in the nominating process, as one of his "civil rights" an equal voice with every other participant. This assumption is absolutely without legal foundation. With its fall, his whole case falls.

CHARLES J. BLOCH,
Counsel for Respondents and
Objectors Named.

Proof of Service.

I, Charles J. Bloch, counsel for the respondents and objectors named, do hereby certify that on the .... day of ....., 1958, I served copies of the foregoing Response of Party Defendants to Reply Brief of Petitioner on the several parties thereto, as follows:

1. On the Honorable Boyd Sloan, Judge of the United States District Court for the Northern District of Georgia, by mailing a copy in a duly addressed envelope, with first-class postage prepaid to him at Gainesville, Georgia, and another to him, care United States Post Office Building, Atlanta, Georgia;

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Atlanta 3, Georgia

.....

Counsel for Respondents and
Objectors Named.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

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WILLIAM B. HARTSFIELD,
Petitioner,

v.

HONORABLE BOYD SLOAN, United States District Judge for the Northern District of Georgia,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF FOR THE UNITED STATES CONFERENCE OF MAYORS AS AMICUS CURIAE AND BRIEF FOR THE UNITED STATES CONFERENCE OF MAYORS AS AMICUS CURIAE

EDWARD BURLING, JR.,
Union Trust Building,
Washington, D. C.

WALLACE M. COHEN,
1832 Jefferson Place,
Washington, D. C.

JOHN J. GUNTHER,
General Counsel,
United States Conference of Mayors.
1707 H Street, N. W.,
Washington 6, D. C.

Attorneys for Amicus Curiae.

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Respondent.

MOTION FOR LEAVE TO FILE BRIEF FOR THE UNITED STATES CONFERENCE OF MAYORS AS AMICUS CURIAE

Comes now the United States Conference of Mayors by its attorneys and moves, pursuant to Rule 42, for leave to file the accompanying brief as amicus curiae in the case of *William B. Hartsfield* v. *Honorable Boyd Sloan*, No. 683, Miscellaneous, October Term, 1957.

The United States Conference of Mayors (hereinafter sometimes referred to as the Conference) is an organization of Mayors of approximately 300 cities with a population of 50,000 or more. Since each member of the Conference is a duly elected incumbent Mayor of a "political subdivision of a State, Territory or Commonwealth" (Rule 42, 4) and in as much as the financial support of the United States Conference of Mayors is derived from public funds

appropriated by member cities, consent or leave for the filing of this brief amicus curiae would appear to be unnecessary under the Rule. Nevertheless, in the absence of an authoritative interpretation by this Court and in the absence of consent from respondent, the Conference has deemed it advisable to present this motion for leave to file the accompanying brief.

The United States Conference of Mayors has a direct and vital interest in this proceeding. Organized in 1934 to promote improved municipal administration throughout the United States and to secure successful local government, the Conference provides a forum for the interchange of information and experience between the major municipalities of the country and between the Government of the United States and its cities. From time to time, as appropriate occasions arise, the Conference presents the views of its members on public issues of importance to municipalities. Such a public issue arises from the Georgia County Unit Primary which has a pervasive adverse impact upon municipalities and their citizens.

In operation and effect, the Georgia County Unit Primary represents a systematic discrimination against, and continuous debasement of, the political voice and position of municipalities and their citizens. Beyond the disproportionate influence which the County Unit Primary gives to non-urban voters in federal elections, it has effected a continuing and serious burden upon the operation of the municipalities themselves. State Governments controlled by self-perpetuating rural minorities systematically discriminate against the interests of municipalities and their citizens. State action to correct this imbalance is impossible of achievement because reform legislation threatens the political power of the very officials who must pass upon it.

The Conference believes that it can make a contribution to the proper disposition of the case at bar by placing the

Georgia County Unit Primary in the larger context of urban underrepresentation. We respectfully call the Court's attention to the article by Mr. Anthony Lewis in the current Harvard Law Review (*Legislative Apportionment and the Federal Courts*, 71 Harv. L. Rev. 1057) for a demonstration of the operation, extent and effects of pervasive municipal underrepresentation.

The Conference respectfully submits that, if leave to file a brief amicus curiae is actually required by Rule 42, the Conference represents the interest and can make the contribution necessary for the granting of its motion.

Respectfully submitted,

EDWARD BURLING, JR.,
Union Trust Building,
Washington, D. C.

WALLACE M. COHEN,
1832 Jefferson Place,
Washington, D. C.

JOHN J. GUNTHER,
General Counsel,
United States Conference of Mayors,
1707 H Street, N. W.,
Washington 6, D. C.

Attorneys for Amicus Curiae.

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Respondent.

BRIEF FOR THE UNITED STATES CONFERENCE OF MAYORS AS AMICUS CURIAE

The Georgia County Unit Primary gives one rural resident a vote worth more than the votes of 100 urban residents. Yet the District Judge found the equal protection issue foreclosed by the decisions of this Court. The District Court's action, if confirmed by a denial of petitioner's motion in this Court, will not only sanction systematic disenfranchisement of urban voters anywhere in the nation, but will open the door to the nullification of the Civil Rights Act of 1957. We cannot believe that this Court will take such far-reaching action without requiring a full exploration of the facts by the appropriate three-judge tribunal and without full consideration of the effect of judicial withdrawal from the broad field of voting inequity and urban disenfranchisement.

I

The Georgia County Unit Primary Nullifies The Votes of Urban Residents

The Georgia statute (Section 34-3212 through 34-3218, Georgia Code Annotated) provides for a county unit system of primary elections under which the person receiving the greatest number of votes in the county obtains the "unit-vote" of the county and the candidate with the greatest number of unit-votes becomes the nominee.[1] The eight largest counties are allotted six unit-votes each; the thirty next largest four unit-votes each; and the remaining 121 counties have two unit-votes each. The operation of this unit-vote system, which disregards the population of the counties involved in its apportionment of political voice, effects staggering discriminations between individual voters and nullifies the votes of a substantial segment of the urban population as completely as if they had been totally barred from the polls.

Eleven hundred residents of Echols County enjoy one unit-vote; 93,500 residents in Fulton County (Atlanta) represent no more than this single unit-vote. The disparity in the value of voting rights between residents of these two counties is thus 85 to 1 in favor of the residents of Echols County (Pet. 38). But the disparity is even more extreme on the basis of actual votes cast. Thus, in the gubernatorial primary in 1954, each vote cast in Chattahoochee County was equivalent to 135 votes cast in Fulton County (Pet. 40-41).

A single street, Moreland Avenue, divides Fulton County from its neighboring County of Dekalb. If a Georgia voter resides on the east side of Moreland Avenue, he has 2.9 times the voting power of his neighbor across the street.

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[1] Nomination is, of course, tantamount to election. Cf. *Terry* v. *Adams*, 345 U.S. 461.

Similarly, Clayton County adjoins Fulton County on the south. A Clayton voter by virtue of his residence one foot across the line has the same electoral influence as 11.5 voters residing one foot to the north.

Petitioner's complaint seeks invalidation of this discriminatory county-unit method of tabulating primary results. Despite the allegations in the complaint of discrimination and disenfranchisement (which we do not understand to be controverted), the District Judge refused to convene a three-judge court pursuant to 28 U.S.C. 2284 on the ground that "the federal question sought to be raised here is unsubstantial for the reason that the previous decisions of the Supreme Court of the United States foreclose the subject and leave no room for inference that the question sought to be raised can be the subject of controversy" (Pet. 25).

II

The Decisions of This Court Do Not Foreclose The Question Sought to be Raised

The only ground which we understand the District Judge or the defendants below to urge in support of the argument that petitioner's case is foreclosed by the decisions of this Court is that petitioner is presenting a "political" question unsuited for judicial adjudication. We respectfully submit that none of the decisions of this Court foreclose the issue presented here. We suggest to the Court that the divergent language in certain of the decisions can be appropriately reconciled by treating the "political-question" rule as no more than one of caution and restraint until overwhelming equities call for judicial action as they do in petitioner's case. At any rate, if any decision of this Court should be deemed to go further, we respectfully urge its reconsideration, especially in the light of the renewed Congressional concern for judicial protection of the franchise

expressed in the Civil Rights Act of 1957 and the ever-increasing disproportion of the political voice of the rural voter as against his city neighbor.

(i) Petitioner's right to have his vote cast and counted without disparagement or dilution is one which this Court has zealously protected as a right flowing from the First Article of the Constitution and the Fourteenth Amendment. See *United States* v. *Classic*, 313 U.S. 299; *Smith* v. *Allwright*, 321 U.S. 649; *United States* v. *Saylor*, 322 U.S. 385; *Terry* v. *Adams*, 345 U.S. 461. In the *Saylor* case, for example, this Court vindicated the right of a qualified voter to have his vote counted without dilution through the *private* stuffing of the ballot box; all that petitioner asks here is that his vote be counted without dilution by the *legislative* stuffing of the ballot box. It would be only "a play upon words" (*Nixon* v. *Herndon*, 273 U.S. 536, 540) to say that the question is "political" in the latter instance though not in the former. The right to have one's vote cast and counted fairly and with some modicum of equality is a personal not a political right in the sense that it runs directly to every citizen. The Constitution commits to the Judiciary the protection of the citizen of Georgia whose vote is devalued to 1/100th strength no less than the Negro barred from the polls or the citizen subjected to vote-dilution by stuffing of the ballot box. No one suggests that the Georgia legislature could baldly prescribe that everyone in "X" County should have 100 votes and everyone in "Y" County one vote. Yet that is exactly what the legislature has accomplished and it is difficult to see how the issue is more "political" in the one instance than in the other.

(ii) *Colegrove* v. *Green*, 328 U.S. 549, does not in any way preclude the relief sought by petitioner in the instant case. Indeed, a majority of the Court in *Colegrove* actually found *in favor of jurisdiction* to adjudicate the misapportionment

claim there asserted. Mr. Justice Rutledge, whose vote was decisive, found the necessary jurisdiction, but concluded that relief should be denied as a matter of equitable discretion. Nor does the opinion by Mr. Justice Frankfurter, speaking for himself and for Mr. Justice Reed and Mr. Justice Burton, preclude the exercise of jurisdiction in the instant case. Mr. Justice Frankfurter wrote: "Because the Illinois legislature has failed to revise its Congressional Representative districts in order to reflect great changes, during more than a generation, in the distribution of its population, we are asked to do this, as it were, for Illinois" (at p. 552). Mr. Justice Frankfurter declared the inability of the Court to "affirmatively remap the Illinois districts", and dismissed as unfeasible the alternative of declaring the existing electoral districts in Illinois invalid, leaving Illinois undistricted with a resulting election at large.

No problems such as those referred to by Mr. Justice Frankfurter in *Colegrove* are presented in the instant case. The Court is not being asked either to revise the make-up of Congressional Districts to reflect changing population distributions nor to grant relief which would require elections at large. This is *not* a reapportionment case; the complaint does not seek to have Georgia remapped politically [2] and the relief sought requires no more than invalidation of an extrinsic and arbitrary weighting of the already-tabulated popular vote.

Colegrove was based upon a complaint asserting that Illinois had failed to revise its Congressional Districts in conformity with population changes. In contrast, the instant case seeks the removal of an impediment to the full and fair count of the vote of petitioner and other urban

---

[2] It should be noted that, despite gross inequities in Georgia's Congressional apportionment (see 71 Harv. L. Rev. 1057, 1062, n. 26), the instant proceeding seeks no relief against that misapportionment.

citizens, under a county unit system which *disregards population* in determining electoral strength and reflects a naked attempt to dilute and disparage the votes of urban citizens. This is exactly the kind of determination this Court has heretofore made and the relief sought is exactly the kind of relief which courts, not legislatures, have traditionally afforded against unconstitutional deprivation of the citizen's right to have his vote cast and counted.

(iii) Moreover, even if this were a reapportionment case, which it is not, in view of developments since *Colegrove*, it might well be that this Court would desire to reconsider the view that legislative rather than judicial action is the appropriate relief against misapportionment abuses. A recent study by Anthony Lewis, *Legislative Apportionment and the Federal Courts*, 71 Harv. L. Rev. 1057, 1093, points out how far Mr. Justice Frankfurter's expectations in this regard have failed to reach fulfillment:

> "A table appended to Mr. Justice Frankfurter's opinion in *Colegrove* listed the most and least populous districts in each state in 1946. A comparison with the same figures for 1957 shows that the disparity has increased in 27 states. 10 states cannot be rated because of elections at large. In only 11 states have the congressional districts become more equitable. And all but 2 of those states were encouraged to redistrict because they lost or gained seats in the 1950 census. As to any hope for reform through the state legislatures, a state court was surely correct when it said many years ago: 'It would be idle and useless to recommit such an apportionment to the voluntary action of the body that made it.' "[3]

[3] Mr. Lewis' study (pp. 1091-1095) gives concrete examples of recent unsuccessful attempts to effect redistricting and details the historical considerations which preclude Congressional reform in the area of gerrymandering and misapportionment.

(iv) Nor does this Court's one-sentence holding in *South* v. *Peters*, 339 U.S. 276, foreclose the relief sought by petitioner. All that the majority held was that federal courts "consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." This was clearly not a decision that federal courts have no power to act because of the "political" nature of the issues involved; it was a decision affirming the lower court's exercise of equitable discretion to refuse relief in the absence of adequately compelling reasons. Here the appropriate lower court has not exercised its equitable discretion because it has never been convened. Certainly *Peters* cannot be deemed to preclude petitioner from making a showing to the appropriate three-judge tribunal of the compelling need for judicial vindication of his right to cast a meaningful vote.

Furthermore, since the 1950 decision in *South* v. *Peters*, Congress enacted the first civil rights law in 87 years precisely in order to ensure more effective protection of the right to vote through the equity powers of the federal courts. It is "fair to say that in all this Congress expressed a mood . . . not merely by oratory but by legislation." *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 487-488. The Civil Rights Act of 1957 expressed the view of Congress and the American people that the right to vote, whether or not denominated "political", should have the fullest protection in federal courts of equity.

Not only does the Civil Rights Act of 1957 express an important change in "mood" since *South* v. *Peters*, but it also presents new issues that should not hastily be resolved. With direct disenfranchisement now subject to more effective prevention, indirect disenfranchisement through means such as those here under consideration becomes the more likely. We would strongly urge the Court not to foreclose these questions at this stage of our electoral development.

CONCLUSION

Petitioner alleges that he has "no effective recourse against the dilution of his vote and against the cited disparities and inequalities of the County Unit System in the nature of legislative action, inasmuch as the composition of the lower House of the General Assembly of Georgia is the basis upon which the County Unit System is patterned . . . and it cannot reasonably be anticipated that the members thereof, exercising the same degree of control over the affairs of the House of Representatives as their respective counties exercise in the nomination of candidates to statewide offices in Primary elections, will be inclined voluntarily to diminish their own political influence or that of their constituents" (Pet. 41-42). Simply stated, the county unit system carries its own built-in self-perpetuation, just as do so many of the other disenfranchisements of urban voters. To denominate such an issue as "political" is to hold forth illusory hopes of reform through elective channels. *Cf. United States* v. *Carolene Products Co.*, 304 U.S. 144, 152, n. 4.

Nor is Congress the appropriate forum for resolving the issues raised by the Georgia County Unit Primary. The question is not one of Congressional apportionment; it is a simple question of disenfranchisement of urban voters. There is certainly as much reason for judicial intervention to protect the right to vote here as there is for Congressional intervention. Congressional power alone does not cause this Court to stay its hand. *Cf. Brown* v. *Board of Education*, 347 U.S. 483. And, of course, as a matter of political reality, Congressional intervention is not a realistic solution. For this Court to fail to recognize that the federal courts alone can rectify the disenfranchisement of urban voters in Georgia, it "would have to be that 'blind' Court, against which Mr. Chief Justice Taft admonished in a famous passage, *Bailey* v. *Drexel Furniture Co.* . . . that does not

see what 'all others can see and understand' . . ." *United States* v. *Rumely*, 345 U.S. 41, 44.

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We urge the Court to grant petitioner a full hearing on the facts and the benefit of mature consideration of the legal issues before the appropriate three-judge tribunal. We respectfully suggest to the Court that such a remand would not constitute a binding precedent requiring judicial intervention in this area. On the other hand, a denial of petitioner's motion would confirm the action below and, without hearing or full consideration, foreclose judicial remedies in a field so close to the heart of the democratic process.

It is respectfully urged that petitioner's motion be granted.

EDWARD BURLING, JR.,
Union Trust Building,
Washington, D. C.

WALLACE M. COHEN,
1832 Jefferson Place,
Washington, D. C.

JOHN J. GUNTHER,
General Counsel,
United States Conference of Mayors,
1707 H Street, N. W.,
Washington 6, D. C.

Attorneys for Amicus Curiae.